Field J.
13-471
Argued
Oct. 30th
Affirmed
Swayne

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 400.

ROBERT PROUT, APPELLANT,

vs.

JOHN T. ROBEY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED DECEMBER 13, 1870.

Dec. 9, 1873

SUPREME COURT OF THE UNITED STATES.

No. 400.

ROBERT PROUT, APPELLANT,

vs.

JOHN T. ROBEY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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3 *Bill of complaint.—Filed Nov.* , 1865.

In the supreme court of the District of Columbia, on the 1st day of November, A. D. 1865.

To the judges of the supreme court of the District of Columbia:

Mary Ann Roby, of the city of Washington, and a citizen of the District of Columbia, brings this her bill against Robert Prout, of Nanjemoy, Charles County, Maryland, and a citizen of the State of Maryland.

And thereupon your oratrix complains and says:

That, on or about the 14th day of April, A. D. 1820, a certain indenture of lease was made, and duly executed, between William Prout, then of the city of Washington, in the District of Columbia, and Jonathan Porter, trustee of Jane Mallion, then of the same place, recorded in Liber A. Y., No. 49, folios 54, 55, 56, 57, in the office of register of deeds for the District of Columbia, whereby the said William Prout did
4 demise, lease, and to farm let unto the said Jonathan Porter, trustee as aforesaid, his executors, administrators, and assigns, all that lot, piece, or portion of ground lying and being in the city of Washington, and contained in the square designated on the plat or survey of said city, as square numbered seven hundred and eighty-seven: Beginning for the same one hundred and eighty feet from the southwest corner of said square, and fronting on "A" street South, and running thence north one hundred and ten feet, thence east twelve feet, thence north eighteen feet one inch, thence east thirty-seven feet two and one-half inches, thence south one hundred twenty-eight feet one inch to the line of South "A" street, thence with the line of South A street forty-nine feet two and a half inches, to the beginning: To have and to hold the said piece or portion of ground, with the appurtenances, to him, the said Jonathan Porter, in trust, for the use and benefit of the said Jane Mallion, her heirs and assigns, for and during, and
5 until the full end and term of ninety-nine years from the eleventh day of April, one thousand eight*y* hundred and twenty, fully to be complete' and ended, to be renewed and renewable from ninety-nine years to ninety-nine years, forever, to the said Jonathan Porter, trustee as aforesaid, his heirs or assigns, yielding and paying therefor yearly, and every year, on the eleventh day of April during the term of the said lease, and during the term of *and* every other lease made for a renewal thereof unto the said William Prout, his heirs, executors, administrators, or assigns, the sum of twenty-five dollars and eighty cents, current money, clear of all taxes, charges, rates, or assessments whatsoever, which might become due on the said piece of ground. And it was expressly agreed and understood that if the said yearly rent of twenty-five dollars and eighty cents thereby reserved, or any part thereof, should remain unpaid at the expiration of sixty days after the same
6 should become due, and not sufficient effects on the premises whereon to levy the said rent, it should and might be lawful for him, the said William Prout, his heirs or assigns, in and upon the premises thereby granted, with the appurtenances, to reënter, and him, the said Jonathan Porter, trustee as aforesaid, his heirs, executors, administrators, or assigns from thence to reject, remove, and expel, and the same again to repossess and enjoy in the same full, ample, and unlimited manner as if the said indenture had never been executed. And it was also covenanted and agreed that if the said Jonathan Porter,

trustee as aforesaid, or the said Jane Mallion, her heirs or assigns, did, and should at any time thereafter pay to the said William Prout, his heirs or assigns, the sum of four hundred and thirty dollars over and above all rents for said piece of ground that might then be in arrears, that then, and in such case, he, the said William Prout, his heirs and assigns, should and would make and execute a good and sufficient
7 deed of release, in fee-simple, to the said Jane Mallion, her heirs or assigns, of the above piece or portion of ground. And it was further covenanted and agreed that if the said Jonathan Porter, trustee as aforesaid, or the said Jane Mallion, or any other person in his or her name and behalf, should at any time or times thereafter during the continuance of the said lease, or any lease made for the renewal thereof, pay unto the said William Prout, his heirs, executors, administrators, or assigns, any sum or sums of money over and above the sum of money which might at that time be due and in arrear for rent toward the purchasing the said piece or portion of ground, in fee-simple, that then, immediately after the end of the ensuing year, the annual rent of twenty-five dollars and eighty cents in future should be abated in the same proportion which the said sum or sums of money so paid bears to the sum of four hundred and thirty dollars, the fee-simple price of the said piece or portion of ground; as in and by the said indenture to which your oratrix craves leave to refer, when produced to this
8 honorable court, will appear.

Your oratrix further says that a clerical error was made in writing the description of the premises in the said lease, as follows, to wit: The word "eighty" where it first occurs after the words "beginning for the same," in the said lease should have been and was intended to be written "eight," and the true description of the premises intended to be conveyed by the said indenture of lease is as follows, to wit: All that lot, piece, or portion of ground lying and being in the city of Washington, and contained in the square designated on the plat or survey of said city as square numbered seven hundred and eighty-seven, (787,) beginning for the same one hundred and eight (108) feet from the southwest corner of said square, and fronting on "A" street South, and running thence north one hundred and ten (110) feet, thence east twelve (12) feet, thence north eighteen (18) feet one (1) inch, thence east thirty-seven (37) feet two and one-half ($2\frac{1}{2}$) inches, thence south one
9 hundred twenty-eight (128) feet one (1) inch, to the line of South A street, thence with the line of South A street forty-nine (49) feet two and a half ($2\frac{1}{2}$) inches, to the beginning.

And your oratrix further says that the said Jane Mallion entered upon and possessed the said premises so intended to be conveyed as aforesaid, under and by virtue of the said lease, yielding and paying said rent, and erected on said premises valuable buildings, and made other valuable improvements.

Your oratrix further says that the said Jane Mallion departed this life on or about the 3d day of October, A. D. 1852, leaving your oratrix heir at law, and her only child her surviving; that the said Jonathan Porter, trustee as aforesaid, departed this life a long time ago, (but when your oratrix cannot say,) leaving no heir or other legal representative, as your oratrix is informed and verily believes; and that the said William Prout, lessee as aforesaid, departed this life a long time ago, and at a date unknown to your oratrix, leaving the said Robert Prout, the defendant above named, his heir at law, him surviving.

10 Your oratrix further complains and says that, upon the death of the said Jane Mallion, one Vandora Mallion, the surviving

husband of the said Jane Mallion, and now deceased, assumed control over the said premises, and wrongfully detained possession thereof from your oratrix until sometime about the 4th day of February, A. D. 1853, and received the rents and profits thereof, and appropriated them to his own use, well knowing the indigent and needy circumstances of your oratrix, and her want of education.

And your oratrix further shows that the Rev. Edward Knight, then of the said city, but now deceased, pretending to own the said premises by virtue of a certain last will and testament made and published by the said Vandora Mallion on or about the 4th day of February, 1853, soon after the date last mentioned, entered upon and took possession of the said premises, and collected the rents and profits of the same until a date unknown to your oratrix, when he relinquished possession and control of the said premises.

11 Your oratrix, further complaining, says that, during the said wrongful possession of the said premises by the said Vandora Mallion and the said Edward Knight, the defendant, the said Robert Prout, did receive from them the rent reserved in and by the said lease, to be paid yearly for the said premises, he well knowing at the time that their possession and use of the said premises was a fraud upon and a great wrong to your oratrix, and that the said Vandora Mallion was determined and intended to prevent your oratrix from obtaining any benefit from the said premises.

Your oratrix, further complaining, says that, after the relinquishment of the possession of the said premises as aforesaid by the said Rev. Edward Knight, the defendant, the said Rev. Rob't Prout, assumed control over the said premises, and received the rents and profits accruing therefrom from the tenants on the premises, and wrongfully appropriated them to his own use and benefit, and still continues wrongfully so to appropriate them, although the amount far exceeded the sum of $25 80, the amount reserved in the said lease.

12 Your oratrix further says that, at all times before and after the abandonment of the possession of the said premises by the said Rev. Edward Knight, there was on the said premises ample and sufficient effects whereon to levy and collect the said rent, reserved as aforesaid by the said lease.

Your oratrix, further complaining, says that she is an unlearned person, unable to read or write, and being utterly ignorant in regard to the law of descents, was, on the death of her mother, the said Jane Mallion, imposed upon, and made to believe by the said Vandora Mallion, the husband of her mother as aforesaid, and others in league with him, that he, the said Vandora Mallion, succeeded to the rights of the said Jane Mallion, and upon her demise became the owner of the leasehold estate in the said premises.

And your oratrix further says that ever since the death of her mother, Jane Mallion, she has been very poor, and that she is now destitute, dependent entirely upon the charity of her neighbors for her subsistence and her clothing.

13 Your oratrix further complains that she continued to believe this false and fraudulent representation of the said Mallion and his confederates until after the abandonment of the said premises by the said Rev. Edward Knight as aforesaid.

And your orator further says that she then, by herself and her agents, requested repeatedly the said Rev. Robert Prout, the defendant aforesaid, to restore to her the possession of the said premises, and to account to her for the rents and profits by him received, or which he

might and ought to have made by levying on the said effects out of the said premises, and after deducting such sum or sums as might be due to him on account of the amount of yearly rent reserved by and in the said lease, to pay over to your oratrix the residue thereof; with which just and reasonable request your oratrix well hoped that the said Rev. Robert Prout would have complied, as in justice and equity he ought to have done; but that the said Robert Prout, well knowing her extreme, helpless poverty, and intending to cheat and defraud your oratrix of her just rights in and to the said premises, refused and still refuses to comply therewith; and to color such refusal the said
14 defendant gives out and pretends that your oratrix is not the daughter of Jane Mallion, whereas your oratrix charges the contrary thereof to be the truth, and that she is the only daughter and sole surviving heir of the said Jane Mallion.

To the end, therefore, that the said defendant may, if he can, show why your oratrix should not have the relief hereby prayed, and may upon his corporal oath, and according to the best and utmost of his knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to the several interrogatories hereinafter numbered and set forth, as by the note hereunder written he is required to answer, that is to say:

1. Whether there is not, in the description of the premises in said lease, a clerical error, and whether the word "eighty," where it first occurs after the words "beginning for the same," in said lease, ought not to have been, and was not intended to be, written "eight," (8.)

2. Whether he is not the heir at law of William Prout, de-
15 ceased, and has not collected the rent due out of the said premises since the death of the said William Prout?

3. Whether Vandora Mallion did not hold possession of the said premises from and after the death of Jane Mallion, and pay rent to him therefor, and how much, and to what time?

4. Whether Rev. Edward Knight did not take possession of the said premises from said Vandora Mallion, and pay rent therefor to him, and how much, and to what time?

5. Whether, after the termination of the possession of said premises by Rev. Edward Knight, he received the rent for said premises, and if not, from what time to what time was said rent unpaid?

6. Whether, if the said rent was due and unpaid for any time, there was not, during such period of non-payment of rent, sufficient property on the premises whereon to levy and make the rent; and how much rent has he received since his possession of the said premises?

16 7. Whether he does not inherit the said premises as the heir at law of the said William Prout, deceased, and whether or not he can make a good merchantable deed, in fee-simple, of the said premises so intended to be conveyed in and by the said lease as aforesaid; and if not, why not?

And that the defendant may come to a fair and just account of all the rents and profits which have or might have been received by, or on the behalf of the said Robert Prout, out of the said premises; and if it shall appear to have been more than the amount due to him, according to the terms of the said lease, then that the residue thereof, with interest, may be paid over to your oratrix; that the clerical error in the description of the premises, in the said lease as aforesaid, may be corrected by substituting the word "eight," (8,) for the word "eighty," (80,) where it first occurs after the words "beginning for the same" in said lease; that the defendant may be decreed by this honorable court to make a good and

marketable title in fee-simple to the premises so intended to be
17 conveyed as aforesaid, to your oratrix, your oratrix being ready and willing, and hereby offering to pay to the said defendant any rent that may be due on said premises, or in arrears, with interest on such sums as may be due, if any, and to pay to the defendant the sum of $430 00, in current money, pursuant to the terms of the said lease; and that your oratrix may be let into possession of the said premises so intended to be conveyed as aforesaid, together with the rents and profits thereof, and that your oratrix may have such other and further relief in the premises as the matter of her case shall require, and to this honorable court shall seem meet and equitable.

May it please your honors to grant unto your oratrix the most gracious writ of subpœna of the United States of America, to be directed to the said Rev. Robert Prout, thereby commanding him, at a certain day, and under a certain penalty therein to be specified, personally to be and appear before your honors in this honorable court, and then and
18 there to answer all and singular the premises, and to stand to, perform, and abide such order and decree therein as to your honors shall seem agreeable to equity and good conscience. And your oratrix shall ever pray.

her
MARY + ANN ROBY.
mark.

Sworn to and mark made before me, Nov. 10, 1865.
RETURN J. MEIGS,
Clerk Sup. C't, D. C.

ENOCH TOTTON and P. H. REINHARD,
Plaintiff's Counsel.

The defendant, Rev. Robert Prout, is required to answer the interrogatories numbered, respectively, 1, 2, 3, 4, 5, 6, & 7.

Affidavit of Mary Ann Roby as to inability to pay costs.—Filed Nov. 1, 1865.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Mary Ann Roby, of the said county, being first duly sworn, did
19 depose and say that she is about to commence a suit in the supreme court of the District of Columbia, for the purpose of recovering certain property of the possession and profits of which she has been and is unjustly deprived; that she is very poor and solely dependant on the charity of her neighbors for her subsistence and clothing, and that she is unable to make the deposit required of plaintiffs by the 3d section of Congress, approved June 27th, 1864.

That she hereby asks for the order of the court allowing her to prosecute the said suit without making the deposit required by the said section.

her
MARY ANN × ROBY.
mark.

Subscribed and sworn to before me, this 30th day of October, A. D. 1868.

R. J. MEIGS, *Clerk.*

Order granting leave to commence suit without deposit.

1865, Nov. 1. Let the petitioner be allowed to prosecute without making the deposit.

GEO. P. FISHER,
Jus. S. C. D. C.

20 *Summons to answer vs. the defendant.—Issued November* 1, 1865.

In the supreme court of the District of Columbia, November 1, 1865.

MARY ANN ROBY, COMPLAINANT,
against
ROBERT PROUT, DEFENDANT. } No. 552. Equity.

The President of the United States to Robert Prout, defendant:

You are hereby commanded to appear in this court, at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill, under pain of attachment, and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk.*

MEMORANDUM.—That the defendant is to enter his appearance in this suit in the clerk's office on or before the special term to which this writ is returnable; otherwise the bill may be taken for confessed.

Marshal's return.

"Summoned.

"D. S. GOODING,
"*Marshal.*"

NOV. 16TH, 1865.

21 *Appearance of Joseph Bradley, jr., for defendant.—Filed Nov.* 22, 1865.

ROBY
vs. } 552. Equity docket 5.
PROUT.

By his order the appearance of J. H. Bradley, jr., is entered for the defendant.

Answer of defendant Robert Prout.—Filed Nov. 22, 1865.

In the supreme court of the District of Columbia.

MARY ANN ROBY
vs. } No. 552. In equity.
REV. ROBERT PROUT.

To the honorable the justices of the supreme court of the District of Columbia, sitting in equity:

The answer of Robert Prout, defendant in the above-entitled cause, to the bill of complaint of complainant.

This defendant, saving and reserving to himself all and every manner of benefit and advantage by reason of the manifold errors and
22 insufficiencies and inaccuracies contained in said bill, for answer thereto or to so much thereof as he is advised it is material, competent, or proper for him to answer, says he admits the execution of the lease by William Prout, deceased, to Jonathan Porter, in trust for one Jane Mallion, about the 14th day of April, A. D. 1820, and that the same is correctly set forth in complainant's bill, together with its penal clauses of forfeiture, right of security upon non-payment of rent for sixty days, and insufficient chattels on the premises to satisfy by distress said rent, and its covenants securing the right of purchase to the lessee, her personal representatives and assigns, but he denies the said right of purchase as independant of payment of rent and taxes; on the contrary, he maintains and contends the payment of rent and taxes under the conditions of said lease were conditions precedent to the said right of purchase, and subject to be lost and perfected by non-performance and the reëntry upon said demised premises of the lessor, his heirs or assigns.

The defendant, further answering, says he believes there was an error in the description of the demised premises, and that it is correctly
23 set forth in said bill, but he does not know the fact. He is informed and believes it to be true said cestui que trust Jane Mallion entered upon said demised premises, and that some inconsiderable improvements were made thereon many years ago, but by whom this defendant does not know, nor does he know the said Jane is dead, nor that said complainant is her child or her only child and only heir at law, nor that said Jonathan Porter is dead, or that he died without leaving any heir or legal representative; of all of which he requires strict proof.

Further answering, he says he admits said lessor is dead, but denies himself to be, as impliedly charged in said bill, the only heir at law of said lessor. This defendant does not admit that Vandora Mallion, mentioned by complainant, wrongfully assumed the control of said demised premises, and detained possession thereof until 4th February, 1853, and received and appropriated to his own use the rents, issues, and profits thereof, or that he knew the complainant to be in indigent and needy circumstances, and without education.

24 This defendant admits the execution, by said Vandora Mallion, of his last will and testament, a certified copy of which he herewith files, marked R. P. No. 1, as part of this answer; and that thereby the said Vandora bequeathed to the Rev. Edward Knight, mentioned in complainant's bill, all his property—real, personal, and mixed—of every nature and kind whatsoever, and wheresoever situated; and this defendant is informed, and believes it to be true, that said Knight did hold possession of, and received rent for, said demised premises; but at what date he took possession, and how long he retained the same, this defendant is unable now to say. He admits said Knight afterwards relinquished the same.

This defendant admits he received some rent from said Vandora Mallion and said Knight during their respective occupation or control of said demised premises, but to what amount this defendant is unable to say, or whether the same was paid to him in accordance with the terms of said lease; but he denies all knowledge that the possession of
25 either the said Vandora or said Knight was a fraud upon, and a great wrong to, the complainant, or that said Vandora was determined and intended to prevent this complainant from obtaining

any benefit from said premises. This defendant admits that he assumed the control over the said premises after said Knight abandoned and renounced all claim to them; that he has received some rent therefrom, but denies it was, in any remote degree, sufficient to meet the terms specified in the lease aforesaid, or equal to the sum of $25 80 per annum; and he denies that, during that period, there was at all times, before and after the abandonment by said Knight, ample and sufficient effects whereon to levy and collect said rent reserved.

This defendant knows nothing of any imposition practiced by said Vandora Mallion upon the complainant, or any one being in league with him for that or any other purpose. He is informed, and believes it to be true, said complainant is poor, needy, and ignorant. He denies that, after said Knight abandoned said premises, the complainant in person, or by her agents, known to this defendant to be such, requested
26 this defendant to restore to her the possession of said premises, and account to her for rents and profits thereof by him received, as alleged in said bill; he denies intending to cheat and defraud the complainant, or that to color such refusal he gives out and pretends that complainant is not the daughter of Jane Mallion. To the interrogatories propounded by this complainant this defendant, answering, says:

To the first interrogatory he says:

1st. There appears from the lease that a clerical error has been committed by making the point of beginning of said lot to start from the northwest instead of the southwest corner of said square.

2d. My father, the William Prout mentioned in said bill, died without making a will. He left five children surviving him, namely, Jonathan, William, Martha, and Mary Prout, and the defendant; and the said property came into my possession by a family division, and that I received whatever rents have been paid since my father's death.

3d. Vandora Mallion did hold possession of said property after the death of Jane Mallion, and did pay rents for the same, but its amount I cannot truly ascertain.

27 4th. The Rev. Edward Knight did hold possession of said property by the will of Vandora Mallion, and paid rent therefore, as I am informed, but the amount paid by him I cannot exactly ascertain; and after holding possession for a time, he finally and formally renounced all claim to said property.

5th. After the abandonment of said premises by the Rev. E. Knight, I received no rent therefor from Sept. 2d, 1859, to Febr. 6th, 1865.

6th. There was not sufficient amount of property on the premises, as was manifested by the of the bailiff, J. H. Wise, of December 6th, 1864. Since it came into my possession, after said Knight abandoned it, I have received one hundred and twenty-six dollars, ($126.)

7th. The said premises I inherited as one of the heirs of my father, in common with my brothers and sisters; and, by a family division, as will fully appear by reference to the deed referred to in my answer, this property was given to me, and I can make a good and merchantable deed, in fee-simple, of said premises, if I understand what that means.

28 And having fully answered the complainant's bill and interrogatories, this defendant avers and charges, and offers himself ready to show and prove, that he is one of the heirs at law of his father, said William Prout, deceased, who left surviving five children, his only heirs, viz., Jonathan, William, Martha, Mary, and this defendant; that by virtue of a family division and settlement made about the day of , A. D. , duly executed and recorded in liber , one of the

land records of the county of Washington, and District of Columbia, to which reference is made as part of this answer. The lot in question, among others, became the defendant's property, subject to the lease aforesaid. This defendant being a non-resident, employed agents to look after the said property, and from time to time received statements of accounts and proceeds of collection under said lease, his own personal knowledge of the condition of affairs being very limited. He further says he knew nothing of any disputes, machinations, claims of title, or other facts connected with John Porter, Jane Mallion, Vandora
29 Mallion, Edward Knight, (who was a Catholic priest,) or the complainant; that the property in question yielded a very small revenue, and after the death of Vandora Mallion, he was informed said Knight claimed title to the land under a will said to have been executed by said Vandora; but as to the strength of this title this defendant neither knew nor cared; that said Knight paid some rent for said property until it was specially taxed for paving a sidewalk and an alley, when said Knight, through his counsel, J. Carroll Brent, abandoned all claims to the property, and he avers, charges, and offers to show and to prove that from 2d September, 1859, to Feb'y, 1865, this defendant received no rent whatsoever for said property, which, together with taxes, amounted, in September, 1863, to nearly $300, for which rent this defendant ordered a distress for rent to be levied on said premises and on the goods and chattels found thereon, to satisfy the same. This rent was and had been due more than 60 days, and on the day of , A. D. 1865, this defendant re-entered upon said premises and took possession thereof under and by virtue
30 of the terms of his lease, and retains the same to this day. Recently said complainant called upon this defendant and wished him to pay her something for her interest in said property; but this defendant then believed and now believes that she had no interest therein, because he had been informed and believes the said Jane Mallion had no child, and the complainant was only an adopted child. Still he told the complainant if she would pay him the arrears of rent, and his costs and charges for taxes, &c., on the said lot, so as to make him whole, he would give her a new lease thereof on the same terms as the former one. This she professed herself unable to do, and there the matter dropped.

The facts stated in the annexed answer, upon my own knowledge, are true to the best of my knowledge, information, and belief, and those stated on information, I believe to be true.

ROBERT PROUT.

Subscribed and sworn to before me this 21st day of November, 1865.

JOHN F. CALLAN,
Notary Public.

31 EXHIBIT R. P., No. 1.

Will of Vandora Mallion.—Filed Nov. 22, 1865.

I, Vandora Mallion, of Washington County, in the District of Columbia, being of sound mind, memory, and understanding; but being of weak and infirm health and body, do make and publish this my last will and testament.

In the first place, I commit my soul to Almighty God and my body to the earth. After being decently buried, my funeral expenses and all my

just debts paid by my executor, hereinafter mentioned, I will and desire, and do hereby give, bequeath, and devise to the Rev'd Edward Knight, and his assigns, all my property, real, personal, and mixed, of every nature and kind whatsoever, and wheresoever situated. I do hereby appoint my friend Michael Dooley my executor, for the purpose of carrying out the above provisions of this my last will and testament.

32 Witness my hand and seal this 4th day of February, 1853.

his
VANDORA + MALLION. [SEAL.]
mark.

Signed and sealed by the testator at his request in our presence, and by us witnessed at his request in his presence, and in the presence of each other.

CHA'S M. NAMER.
J. B. MOCKLEN.
GEO. W. BRAY.

DISTRICT OF COLUMBIA,
Washington County, to wit:

JUNE 25, 1857.

This day appeared Charles M. Namer, one of the subscribing witnesses to the aforegoing last will and testament of Vandora Mallion, late of Washington County, aforesaid, deceased, & made oath on the Holy Evangels of Almighty God, that he did see the testator therein named, sign and seal this will, (by making his mark thereto;) that he published, pronounced, & declared the same to be his last will

33 & testament; that at the time of so doing, he was, to the best of his apprehension, of sound & disposing mind, memory, & understanding, and that he, together with J B. Mocklen, & George W. Bray, the subscribing witnesses, respectively subscribed their names as witnesses to this will, in the presence and at the request of the testator, and in the presence of each other.

Sworn before—

EDW. N. ROACH,
Reg't. Wills.

OFFICE OF REGISTER OF WILLS,
November 20th, 1865.

DISTRICT OF COLUMBIA,
Washington County, to wit:

I hereby certify that the foregoing is a true copy from the original will of Vandora Mallion, filed and recorded in the office of register of wills for Washington County aforesaid.

Witness my hand and the seal of the orphan's court of Washington County aforesaid, this 20th day of November, A. D. 1865.

[SEAL.] Z. C. ROBBINS,
Register of Wills.

34 *General replication to def't's answer.—Filed Dec.* 14, 1865.

In the supreme court of the District of Columbia.

The replication of Mary Ann Roby, complainant, to the answer of Rev'd Robert Prout, defendant.

This repliant, saving and reserving unto herself all and all manner of

advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto, saith that she will aver and prove her said bill to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by her said bill she hath already prayed.

MARY ANN ROBY.

ENOCH TOTTEN,
P. H. REINHARD,
Sol'rs for Compl't.

35 *Bill of revivor.—Filed Dec.* 13, 1866.

To the honorable the judges of the supreme court of the District of Columbia:

Humbly complaining, showeth unto your honors, your orator, John T. Roby, of the city of Washington, in said district, that Mary Ann Roby, late of said city and district, but now deceased, on or about the 1st day of November, 1865, exhibited her original bill of complaint in this honorable court against Robert Prout, as the defendant thereto, thereby stating such several things and matters as are therein for that purpose more particularly mentioned and set forth.

And your orator further showeth that process duly issued against said defendant, and he appeared and put in his answer to the said bill. That testimony has been taken before the commissioner, to whom the cause was referred for that purpose, but the same has not been completed, nor has there been any return made to the court, nor any

36 general report in the cause. Your orator further shows that the said plaintiff, Mary Ann Roby, lately, and on or about the 17th day of November, 1866, departed this life, leaving your orator, her only child, and her sole heir and legal representative. Your orator further showeth that the said suit and proceedings have become abated by the death of the said Mary Ann Roby, and your orator is, as he is advised and believes, as the personal representative of the said Mary Ann Roby, entitled to have the said suit and proceedings revived against the said defendant Robert Prout, and to have the said cause put in the same state and condition as the same was in previously to the death of the said Mary Ann Roby.

To the end, therefore, that the said defendant may answer the premises, and that the said suit and proceedings which so became abated as aforesaid, may stand revived, and be in the same plight and condition as the same were in the time of the death of the said Mary Ann Roby, or, that the said defendant may show good cause to the contrary:

37 May it please your honors to grant unto your orator, the most gracious writ of subpœna to revive, issuing out of, and under the seal of this honorable court, to be directed to the said Robert Prout, thereby commanding him, at a certain day and under a certain pain, to be therein limited, personally to appear before your honors, in this honorable court, and then and there to show cause, if he can, why the said suit and proceedings therein had, should not stand and be revived

against him, and be in the same plight and condition as the same were, at the time of the abatement thereof, and further to stand to and abide such order and decree in the premises, as to your honor shall seem meet. And your orator shall ever pray, &c.

JOHN T. ROBY.

ENOCH TOTTEN,
P. H. REINHARD,
Sol'rs for Complainant.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Subscribed and sworn to before me on this first day of December, A. D. 1866, by the above-named complainant.

JA'S CULL, *J. P.* [SEAL.]

38 *Return to bill of revivor.*

"Service of process waived.

"JOS. H. BRADLEY, JR.,
"*Sol'r for Def't.*

"13 DEC., 1866."

Answer to bill of revivor.

In the supreme court of the District of Columbia, sitting in equity.

ROBEY
vs.
PROUT. } No. 552. Equity.

To the honorable the justices of the supreme court of the District of Columbia, sitting in equity.

The answer of Robert Prout, the defendant, to the bill of revivor of John T. Robey, respectfully shews unto your honors:

He admits the filing of the original bill in this cause, as alleged by the said John T. Robey; that process was duly served on this defendant, and that he appeared and filed his answer to said bill; that
38½ testimony was taken as alleged; that the same has not been completed, nor any return thereof made to this court, nor any general report in this cause. He denies the death of the said Mary Ann Robey, so far as he knows; he denies she left, if dead, the plaintiff, John T. Robey, her sole heir & legal representative.

He denies the proceedings in said cause have abated; he denies the plaintiff, John T. Robey, is the personal representative of the said Mary Ann Robey; on the contrary, he is advised & so expects to shew and to prove that the said John T. Robey, if the said Mary Ann Robey be dead, is her legitimate offspring, and he requires strict proof of all the material allegations in said bill of revivor; & having fully answered, prays to be hence dismissed, &c.

JOS. H. BRADLEY,
Sol'r for Def't.

Defendant's affidavit waived by consent.

JOS. H. BRADLEY, JR.,
Sol'r for Def't.
ENOCH TOTTEN,
Sol'r for Pl'ff.

Order setting cause for hearing.—Filed 1867, *June* 4.

ROBEY
vs. } 552. Eq.
PROUT.

This cause appearing ready for hearing, it is this 4th June, 1867, ordered that the same be, and hereby is, set down for hearing, and placed upon the calendar.

39 *Complainant's testimony.*

In the supreme court of the District of Columbia.

MARY ANN ROBEY
vs. } No. 552. In chancery.
ROBERT PROUT.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Be it remembered that, on this 22d of January, in the year of our Lord one thousand eight hundred and sixty-six, I, John J. Johnson, an examiner in chancery, did cause to be personally present at the office of Joseph H. Bradley, jr., in the city of Washington, in said district, Henrietta Walters, James Lynch, Margaret Corcoran, James Walsh, Patrick Corcoran, William A. Mulloy, Charles A. Vermillion, P. H. Reinhard, Mary Ann Robey, and J. T. Robey, to certify on the part and behalf of the complainant, in a certain cause now depending in the supreme court of the District of Columbia, wherein Mary Ann Robey is complainant and Robert Prout defendant.

40 WASHINGTON, D. C., *January 22d*, 1866.

MARY ANN ROBY
vs. } No. 552. Equity.
ROBERT PROUT.

HENRIETTA WATERS, being duly sworn according to law, deposes and says:

Examined by Enoch Totton, counsel for the complainant:

I have lived in Washington City, District of Columbia, better than thirty years. I know the plaintiff to this cause, Mary Ann Roby. I have known her for nearly the same length of time. I knew Jane Mallion, the wife of Vandore Mallion, for the same length of time that I knew the daughter. At the time that I knew Jane Mallion, she lived on South A street, Capitol Hill, in this city. I have heard her say that she owned the houses, but leased the ground from Mr. Prout. I lived on those premises. The lady that I lived with lived in one of
41 those houses that I have spoken of, which she rented from Mrs. Malion. I lived there with Mrs. Basson some three or four months. This was nearly thirty years ago. I remember when Mrs. Mallion died, but cannot say exactly how long ago it has been. I have heard Mrs. Mallion say that she was a Rodgers before she married Vandore Mallion, and that she was a widow. Mrs. Mallion has told me that Mary Ann Roby was her child. I have frequently made dresses for this

child, and then it was that I heard her speak of this child. I heard her say that, until this child was six weeks old, she never got a single night's rest. She always spoke of this child as her daughter. I have frequently heard her say that Mary Ann Roby was not the daughter of Vandore Mallion, but that it was her daughter. I have heard Vandore Mallion say that it was not his child, but always spoke of her as his wife's child. After the death of his wife he boarded with me at
42 three or four different periods, up to the time he went to the infirmary.

Cross-examined by Mr. Bradley, for defendant:

1st interrogatory. Did you know Jane Mallion before the birth of the complainant?

Answer. No, sir; I did not.

2nd interrogatory. About how old was the complainant when you first became acquainted with her?

Answer. I should judge about thirteen or fourteen years of age.

3rd interrogatory. Did you become acquainted with Jane Mallion and the complainant at the same time; and if so, where, and in what year?

Answer. I do not remember the year. I became acquainted with them at the same time and at the same place, on South A street.

4th interrogatory. Where did you then reside?

Answer. In one of Mrs. Mallion's houses, in South A street, next door to her.

43 5th interrogatory. Did you continue to reside there until her death?

Answer. I resided next door three or four months, possibly five months; I cannot say positively.

6th interrogatory. Where were you living at the time of her death; how long time had elapsed between her death and the time you removed next door from her?

Answer. I do not recollect how long ago it has been.

7th interrogatory. Has your acquaintance with the complainant continued up to this date.

Answer. Yes, sir.

8th interrogatory. With whom is she now living?

Answer. I do not know.

9th interrogatory. Were you in the habit, at any period, of visiting Jane Mallion frequently in her lifetime; and if so, for what period?

Answer. I do not know for what period. I use' to buy milk of her, and that took me there almost every day. I was in the habit of visiting her from the beginning of her acquaintance until her death.

44 10th interrogatory. Were you an intimate and confidential friend of hers?

Answer. I was.

11th interrogatory. When you first knew her, was she the wife of Vandore Mallion?

Answer. Yes, sir.

12th interrogatory. Explain if you please, why it was she, a married woman, avowed herself to you to be the mother of an illegitimate child?

Answer. She never said that she was an illegitimate child. She always spoke of her as the daughter of her first husband.

13th interrogatory. What was her maiden name?

Answer. I do not know.

14th interrogatory. What was her first husband's name, if she ever had one?

Answer. Rodgers.

15th interrogatory. When did she marry Vandore Mallion?

Answer. I cannot say. She was married to Vandore Mallion when I knew her.

45 16th interrogatory. Under what circumstances did she first mention the fact to which you have testified?

Answer. Speaking of the trouble people had in raising children, was the way she ever spoke to me.

17th interrogatory. Was the complainant ever married: if so, what was her husband's name, when and where was she married?

Answer. I cannot say that she ever was married. I did not see her married. Her husband's name was Dorry Roby.

18th interrogatory. Did you know this man, Dorry Roby, personally?

Answer. Yes, sir; I knew him personally

19th interrogatory. Where did he live, and is he living or dead?

Answer. I do not know where he lived at the time of his death; it was somewhere near the navy yard.

20th interrogatory. Where did he live when you knew him, and what was his occupation?

46 Answer. He was a boatsman. I saw him at Mrs. Mallion's.

21st interrogatory. Was that before or after his alleged marriage?

Answer. I have seen him, both before and after his marriage, at Mrs. Mallion's.

22nd interrogatory. Where was Jane Mallion living at the time of her death?

Answer. South A street, the same house where I first knew her.

23rd interrogatory. At the time of Jane Mallion's death, was Dorry Roby living?

Answer. No sir.

24th interrogatory. Where was the complainant living at the death of her mother?

Answer. She was living on the navy yard somewhere, though she was stopping with her mother when she died.

25th interrogatory. State, if you can, the precise language used by Jane Mallion at various times, or at any time, in speaking to you of the complainant.

47 Answer. She has at times, when this girl would be disobedient, *she* spoke then of the trouble she *gave* in raising her. When the girl would go out to play, sometimes she would stay too long; she said she had no company but her; that she had had so much trouble to raise her to be a comfort to her.

26th interrogatory. Is it from such communications stated to you as mentioned in your last answer, that you infer and testify that she was Jane Mallion's daughter?

Answer. Yes, sir. I do not believe any one would speak of their troubles unless it was their child.

27th interrogatory. Are there any other facts going to fix in your recollection, whose daughter she was?

Answer. None particularly.

Re-examined by Mr. Totten:

1st interrogatory. State whether you testify that the complainant was the daughter of Jane Mallion, because she told *her* of the troubles

48 before stated, or for the reason that she told *her* she was her daughter.

(Objected to by Mr. Bradley.)

Answer. She always called her her daughter, and when she wanted anything made for her, she would say for her daughter Mary Ann. I have heard her introduce her to persons as her daughter.

2nd interrogatory. What was the conduct of the complainant towards Mrs. Mallion during her sickness, and at her death?

(Objected to by Mr. Bradley, because it is a proper subject of inquiry in the examination in chief, and is not new matter drawn out by the cross-examination; and also, is directly a leading question.)

Answer. She treated her as any other child would a mother.

her
HRNRIETTA + WATERS.
mark.

Sworn to and witnesseth before me this 22nd day of January, A. D. 1866.

J. J. JOHNSON,
Commissioner.

MARY ANN ROBY
vs.
ROBERT PROUT. } No. 552. Equity.

JAMES LYNCH, being duly sworn according to law and says:

Examined by E. Totton, for the complainant:

I have lived in Washington over forty-eight years. I know Mary Ann Roby, the complainant in this cause. I have known her as far back as I can remember—at least forty years. I knew Jane Mallion, the wife of Vandore Mallion, for the same length of time. They lived on South A street, between 3rd and 4th streets east. They lived there the entire time during my knowledge of them. I have always been led to believe that Mary Ann Roby was the daughter of Jane Mallion. I have heard him say that she was not his daughter, but my impression is that I heard him say that she was his wife's daughter. She was generally looked upon in the neighborhood as being the daugh-
50 ter of Mrs. Mallion. I always thought that she treated her as her daughter. I have known her to look after her as a parent would after their child. Vandore was a miserable old wretch, and would ill-treat any one that he had control over. Being a boy playing around, I have frequently heard Mrs. Mallion scolding the old man for abusing this child. They were supposed to be married when I first knew them, and lived as man and wife. I never heard anything to the contrary. After Mrs. Mallion died, Vandore Mallion took possession of the premises and retained them about four to six years, and subsequently turned them over to Father Knight, pastor of St. Peter's Church, Capitol Hill. I do not know how long Father Knight retained the premises. I have lived within two squares of the premises, during the entire time, and am well acquainted with them. From the death of Mrs. Mallion to the time when Father Knight took possession, I
51 should think the property would rent for at least four hundred dollars per year, for the three houses. During the time Father Knight had the premises, I suppose the rent would be about the same. Up to 1862, it would rent for what I have already stated. I have no knowledge of the condition of the property. I can only speak from the appearance outside. So far as I know the property has been occupied all the time. I presume they were tenants. Other parties lived in them

besides Vandore Mallion. I think the premises were occupied by tenants during the time Mr. Knight had possession of the premises. From common report, John C. Fitzpatrick was agent and collected the rent, I think for the church. Fitzpatrick and Edward Knight are both dead. So far as I know the premises have been continually occupied up to the present time. Patrick Corcoran still lives in one of those houses on the premises, and carries on a small store. I should think the
52 goods in the store would not amount to more than two hundred dollars. Never to my knowledge did Corcoran keep his hack and horses on these premises. I cannot say that there has been any property in these houses except Corcoran's, in the last ten years, for I have never been in them. I never saw any oxen, cows, and horses in these premises; I am not positive of this. I am unable to say how long Corcoran has been keeping store on these premises. I think about the last three or four years. From 1862 up to the present time, I think twelve dollars and a half would be a fair average for each of the three houses. I am satisfied the property would rent for double that amount: that is, for the last two years back. I suppose Corcoran's house alone would rent for thirty dollars at least.

Cross-examined by J. H. Bradley, jr., counsel for defendant:

I do not know in point of fact for what those houses rented. I do not know that they ever were rented. I do not know whether the
53 people lived there were able to pay rent. I know Mrs. Henrietta Waters, the witness that has been examined in this case.

1st interrogatory. How long have you known her?

Answer. In the neighborhood of 30 years.

2nd interrogatory. What opportunities have you for knowing her? State where she lived and also where you live.

Answer. I have known her as a person living in the neighborhood in passing.

3rd interrogatory. What is her general reputation for chastity?

(Objected to by Mr. Totton, for complainant.)

Answer. Rather bad.

JA'S LYNCH.

Swôrn to and subscribed before me this 5th day of February, 1866.

JOHN J. JOHNSON,
Special Commissioner.

54 MONDAY, *February 5th*, 1866.

MARGARET CORCORAN, being duly sworn according to law and says:

Examined by Mr. Totton, for complainant:

I live on South A street. I have lived where I now live going on nine years. Mr. Van Reswick, agent for Mr. Prout, is my landlord. I went into those premises under the church. I paid rent when I first went into those premises to Mr. Fitzpatrick, who was agent for the church. I paid rent to Mr. Fitzpatrick about four years; after that I did not pay rent to any person until I paid it to Mr. Van Reswick. I think it was about four years I did not pay rent to anybody. I commenced to pay rent to Mr. Van Reswick one year ago the first of January, 1865. I paid to Mr. Fitzpatrick seven dollars per month part of the time, and five dollars part of the time. I paid seven dollars per month for about two years, and five for the remainder of the time under Mr. Fitzpatrick. I do not know whether those premises were
55 worth more than what I was paying Mr. Fitzpatrick. (The wit-

ness corrects herself and says:) The premises were not worth as much as I was paying Mr. Fitzpatrick. During the time I was not paying rent no one claimed rent from me. During those four years no one tried to have me acknowledge them as their landlord until I paid rent to Mr. Van Reswick. There *were* household property in this house the whole of the time I occupied it. I did move out some things, but never moved out all things. I never moved myself. There was not enough property to pay the rent all the time I lived there. During those four years there was not property enough to pay the rent. During the four years there was enough property if it had been sold, to pay a few months rent. During those four years I paid no rent, my property was worth about seventy-five dollars. Since that time there has been more furniture. Since I have acknowledged Mr. Van Res-
56 wick, I have been paying him five dollars per month. There are three houses on those premises. I know the tenants in the other two houses. I have been acquainted during my occupancy with the tenants of the other two houses. During the nine years that I have lived there, there has not been property in the other two houses all the time. I do not know how long those houses remained empty, until those people moved into them again. They were vacant about January 1st, 1865. They were vacant until sometime in the spring. They were occupied from 1857 down to the time that I speak of. I think about twenty or thirty dollars each, would buy what furniture was in those houses. This furniture was in those houses all the time until the people moved out. I spoke of my furniture being partly moved out; it was because Mr. Handy told me to move it out. This was about Christmas, 1864. I moved everything out, except a few things; the furniture that I moved out, I put in first
57 one place and then another, until I settled about the rent, and then I moved them back. These goods were taken off the premises. Mr. Handy told me if there was property enough found on the premises it would be levied on to pay the debt. He did not come to me as a justice of the peace, or as agent of anybody, but just came in and told me that this property would be levied on. I believe he is a particular friend of Mr. Prout's. I agreed with Mr. Handy to pay rent to Mr. Van Reswick. Mr. Handy said that Mr. Van Reswick was Mr. Prout's agent. When I took the premises from Mr. Handy, I put the furniture back. I have been living there ever since.

Cross-examined by Mr. Bradley, for defendant:

Mr. E. Handy's name is Edward Handy, the justice of the peace. During the four years that I did not pay rent was because no person asked for it. Mr. Fitzpatrick was agent for the Catholic church.
58 Father Knight was pastor of the church. I do not know when he died, it has been over two years. I do not know when Mr. Fitzpatrick died; I think Mr. Fitzpatrick died before Father Knight, there was not much time distant between the two. I do not know Mary Ann Roby, the complainant. Mr. John Grant and Mrs. Hannorah Dwyer lived in those other two houses during the four years that no rent was paid. Mrs. Dwyer lives now on East 5th st., between E. Capitol and North E street. John Grant has gone North somewhere, I do not know. During those four years these people were very poor. These people moved away between Christmas and New Years, 1864. Mr. Handy never claimed any rent of me or my husband at all. I hid my furniture because I was afraid it would be levied on for the rent. I did not tell Mr. Handy where I had put this furniture. I did

not tell Mr. Van Reswick. John Grant and Mrs. Dwyer took
59 their furniture away. They moved away entirely. John Grant and Mrs. Dwyer moved most of their things away in the night time. They had not much to move. I did not move any of my things away in the night. I moved them away in the evening and scattered them about in safe places. Those tenants in the other two houses pays rent to Mr. Van Reswick, as agent for Mr. Prout.

Re-examined:

Justice Hardy never asked me where this property was. He never tried to find out where this property was as I know of.

1st interrogatory. When Esq'r Hardy told you to move your property, or it would be levied on, did he tell you that if you would take it out of the house, and acknowledge Mr. Prout as your landlord, that it would be all right, and that you might move your property back?

(Objected to by Mr. Bradley, for defendant, because it is not responsive to the cross-examination nor to any new matter drawn out
60 thereby; and because it was proper subject for direct examination, and because it is directly a leading question.)

Answer. Yes, sir.

Re-cross-examined by Mr. Bradley for defendant:

Mr. Hardy told me about Christmas, the year before this last one gone past. I was right in the house when he told me; there *were* nobody present.

1st interrogatory. Repeat if you can all that was said on that occasion?

Answer. Indeed I can't think of all that was said. He did not say anything more than to tell me to move the things out, and that as soon as I acknowledged to pay rent I could move them back again.

2nd interrogatory. You had refused to pay rent to him before that?

Answer. No, sir, I did not. He didn't ask me.

3rd interrogatory. If you had not refused to pay rent, why did he tell you that as soon as you acknowledged to pay rent you might move the things back again?

61 Answer. I do not know what was his reason for telling me to move them out, no more than that he told me if they came in there they would levy on the things to pay the rent.

4th interrogatory. Did not Mr. Handy speak to you before this about the rent?

Answer. There was a disturbance about a year before, in which he told us about it then.

5th interrogatory. What did he tell you at that time?

Answer. He said they would be levied on, the same as he did the last time.

6th interrogatory. Why did you hide the things when you sent them away?

Answer. I was afraid they would be levied on and taken away.

7th interrogatory. How long did you keep them away?

Answer. I kept some of them away three or four weeks, I kept more of them away four or five months.

8th interrogatory. Did Mr. Handy speak to you about the rent only these two times?

Answer. That is all, sir.

62 9th interrogatory. Did he not in the summer or fall before you sent the things away, speak to you or your husband about the rent?

Answer. No, sir; not until a little while before I moved the things out.

10th interrogatory. Now he spoke to you about this one day, how soon after it did you move the things?

Answer. In the course of a week?

her
MARGARET + CORCORAN.
mark.

Sworn to and witnessed before me this 5th day of February, 1866.

J. J. JOHNSON,
Special Commissioner.

63 JAMES WALSH, being duly sworn according to law, and says:

Examined by Mr. Totten for complainant:

I do not know the parties to this suit. I did know Vandore Mallion, but not his wife. I did live on South A street, the property in controversy. I moved there in 1855. I lived there about two years from 1855 to 1857. I rented the premises from a Mr. Duley. He was agent for Father Knight's Catholic Church. I paid nine dollars per month rent part of the time, and seven dollars the other part. I occupied one of the tenements, now occupied by Corcoran. When Duley died, Fitzpatrick came as agent, and I then paid to him. I think Vandore Mallion died in 1856 or 1857. I am not certain which. I do not know when the church relinquished their control over this property. I took this property from the church.

JAMES WALSH.

Sworn to and subscribed before me this 5th day of February, 1866.

J. J. JOHNSON,
Special Commissioner.

64 PATRICK CORCORAN, being duly sworn according to law, and says:

Examined by Mr. Totten for complainant:

I am the husband of Mrs. Corcoran, the witness that first testified. I live on the premises now in dispute. There are three tenements. I moved there some time, in 1857, about the summer. I rented the premises from the church, Mr. Fitzpatrick acting as agent. I rented the premises for seven dollars per month. I presume I continued to hold the premises at seven dollars per month somewhere between twelve and eighteen months, and then it was reduced to five. I continued to hold the premises at five dollars until 1860 or 1861; then I paid no more rent until twelve months last January, 1865. Mr. Fitzpatrick then told me that he would receive no more rent.

1st interrogatory. Did he tell you why he would not receive any more rent?

(Objected to by Mr. Bradley, because he is not, and never was, the agent of the defendant.)

65 Answer. He told me that the property at this time—the pavement was graded in the alley—and that there was a large debt on the property on that account, and that he was getting no rents out of the property only from me. The house next to me there were two separate tenants in it. I understood him to say that he was getting rent from one of those parties in this house, and that of mine was all that he was getting. He told me that they were going to try to sell the property or give it up

to Mr. Prout. This was a leased property, and the church had to pay so much yearly ground rent, besides improvements; that was the reason why they were going to give it up. The property was not worth it. During the time I paid no rent there was always property enough in the house to meet a month's rent, I presume, with the exception of this time that the goods were taken out. I was not at home. There was always from forty to fifty dollars' worth of property on the prem-
66 ises. I can not say how much property was in those other houses. The only time I ever was in one of them was to a wake. I do not believe there was much property in the house. Those other two houses were always occupied from the time that I went in until January, 1865. There was a cow there occasionally, and some hogs. This was during the four years that I was not paying rent. I am now paying rent to Mr. Van Reswick, agent for Mr. Prout. He was acknowledged as landlord in my absence by my wife. This was in January, 1865. During these four years no one ever asked me to acknowledge them as their landlord. Squire Handy never said anything to me about acknowledging Mr. Prout as landlord. There never was any attempt to distrain my property for rent nor any distress levied that I am aware of. I do not know what occurred in my absence, when my wife acknowledged Mr. Prout as my landlord. I have paid Mr. Van Reswick.
67 since that time, at the rate of five dollars per month. I do not know how much the other two tenants have paid Mr. Van Reswick. I am boiler maker by profession. I keep store on those premises.

Cross-examined by Mr. Bradley for defendant:

I went away in 1864, in June, and came back in September or October, 1865. My house corners on the alley, and is larger than one of the other houses, but not so large as the one next to it. It contains four rooms and basement. In a portion of the rooms up stairs you cannot stand up in them—the house is a shed roof. I would be willing some time ago to pay five dollars for one of the houses, but not now for either of them. All of this property is in bad repair. I do not know why the others did not pay rent to Mr. Fitzpatrick, only because he told me they were poor. I know they were in poor circumstances. I rented by the month. I do not know Mary Ann Roby, the complainant.

PATRICK CORCORAN.

Sworn to and subscribed before me this 5th day of February, 1866.

J. J. JOHNSON,
Special Commissioner.

68 FEBRUARY 7TH, 1866.

W. A. MULLOY, being duly sworn according to law, deposeth and saith:

Examined by Mr. Totton for complainant:

I live No. 440 3d street East, Washington, D. C. I was born in Washington, and have lived here ever since. I am in my forty-seventh year. I was acquainted with Vandore Mallion and his wife in their lifetime. I first became acquainted with those parties from early youth. I have known them ever since I have known myself. I cannot say when Vandore Mallion died. I think it has been more than five years. Mrs. Mallion died several years before him. When I first knew them the reputation was that they were married; that is, they lived together as man and wife. To my personal knowledge, I do not know as to

their having any children. Mary Ann Roby called them papa and mam'a; she was raised by them. I have known Mary Ann Roby ever since I could recollect up to this time. I have no knowledge
69 that Mary Ann Roby was the daughter of either Vandore Mallion or Jane Mallion, his wife. Mrs. Mallion used to say to Mary Ann Roby come here, my child, or girl. The old man called her gal. The old man never told me that this girl was his child, nor that she was not. Mrs. Mallion never told me that this was her child. After Mrs. Roby was married I was more intimately acquainted with the old man and old woman, because I moved in the neighborhood. I do not recollect at that time of hearing much talk about this child as being the daughter of either of these parties. More recently I have heard more talk than formerly. It may have been the cause of my forming in my mind the opinion that she was an adopted child. I have no knowledge of the fact either way. Mrs. Mallion raised this child, and certainly treated her as a child. She was a very kind old woman to every body, different from her husband, who was a very penurious old man. I do not think Vandore Mallion liked this girl. I have heard him
70 speak of her as being trifling. I am acquainted with the premises in dispute. I own property in the same square, and have lived there for twenty-five years. I think there are three tenements on these premises. These tenements have been occupied nearly all the time since 1852. I should think this property would sell for nearly five thousand dollars. The houses were built there at my first recollection of the neighborhood. From 1850 up to 1860, the corner house would rent for ten dollars, and the others for about five dollars per month. A change in the rental of houses took place in the fall of 1861, and I have not the least doubt but that the corner house would rent for twenty dollars from that period up to this time. During this time the other two houses would range from seven to nine dollars per month easily. From 1860 to 1865, there was not at all times sufficient property to make the rent. There was property sufficient to make the rents
71 most of the time. The only time to my personal knowledge that there was not property enough to pay the rents at any one time was from three weeks to a month. This was in 1865 that I speak of. Not to my knowledge there was no one time prior to 1865 but what there was property enough to satisfy the rents. Immediately after the death of Mrs. Mallion, her husband, Vandore Mallion, retained possession of this property. I do not know how long he continued to hold this property. I am acquainted with Patrick Corcoran and wife, they live in the house on these premises called the "Store." Mrs. Corcoran, in 1865, and prior to the death, I think, of President Lincoln, moved out some of her furniture. At the time referred to, I acted for all hands as a neighbor and a friend. Mr. Handy told me he was the agent for Mr. Prout, and I was protecting these parties. I did this business with Esquire Handy. Mr. Handy told me he wanted to get possession for Mr. Prout, and get the parties under some nominal rent. He
72 was trying to get the tenants to recognize Prout as their landlord. The parties, under my advice, were unwilling to recognize Mr. Prout as their landlord. Mr. Handy was, perhaps, two or three months trying to get this recognition. Mr. Handy made propositions to these parties through me. Mr. Handy attempted to distrain all these parties through Officer Wise. Mr. Handy told me that he advised Mrs. Corcoran to move her furniture out of the house, which I know she did; he said he did not want Wise to take her furniture under the distress—my impression is, because he led me to believe that he was

friendly to Mrs. Corcoran. My proposition to Mr. Handy was that, if he would permit Mrs. Corcoran to remain there one year, or upwards, at five dollars per month, she would pay it, and recognize Mr. Prout as landlord. He replied that he would. All this was in the absence of Mr. Corcoran, her husband, who was away. This was after the
73 furniture had been moved away, and after this proposition was settled, the furniture was moved back. This was for ground rent that this attempt at levy was made, and Mr. Handy told me that he did not want to take this woman's furniture for the rent of the whole lot. I have heard of Jonathan Porter, and do not know that I have ever seen him. When I first heard of Jonathan Porter I was a boy. I do not know whether he is dead or alive. I have not heard of him for 25 or 30 years.

Cross-examined by Mr. Bradley for defendant:

Mary Ann Roby passed by the name of Mary Mallion; never heard her called Mary Ann. During her childhood I saw her frequently in passing to school. She was, I think, about 10 or twelve years old.

1st interrogatory. Has she not commonly been esteemed by you and others who knew her, the adopted child of Mrs. Mallion?

Answer. I so thought. I cannot speak for others.

74 2nd interrogatory. Did you ever hear her paternity the subject of conversation; if so, what have you heard?

(Objected to by Mr. Totton.)

Answer. I can say that I have, only since this matter of litigation.

3rd interrogatory. Have you not, since this suit, heard it said by those who know her, that she was an adopted child of Mrs. Mallion?

(Objected to by Mr. Totton.)

Answer. I have talked with no one on the subject, except the counsel on both sides.

4th interrogatory. Was not Mrs. Mallion in the habit of mingling socially with lewd persons?

(Objected to by Mr. Totton for complainant.)

Answer. Persons of that class visited her.

5th interrogatory. Do you know whether Mrs. Mallion was a native of Washington, and how long she had lived here?

Answer. I do not.

6th interrogatory. Have the tenements to which you have testified been standing ever since you can recollect?

Answer. Yes, sir.

75 7th interrogatory. What opportunities have you had of knowing, if any, their condition as to repair during the past ten years?

Answer. Being in that immediate neighborhood every day, I should say their condition at this present time, and for one year back, is not as good as for the prior nine years; they were in better repair during the nine years than they are now.

8th interrogatory. Did not Vandore Mallion claim this as his property after the death of his wife?

Answer. It always passed as Vandore's property; it went as Vandore's Row; is so called yet.

9th interrogatory. Was not Mary Roby married at the time of her mother's death?

Answer. Yes, sir, and many years before that, and a widow.

10th interrogatory. Did she, after her mother's death, live with Vandore Mallion?

Answer. I do not think she lived in the house after the death of the reputed mother.

11th interrogatory. Do you know what degree of education she had?

Answer. Very little, if any.

76 12th interrogatory. Is she or not a woman of fair intelligence?

Answer. I should take her to be.

13th interrogatory. What class of persons have chiefly occupied the tenements referred to for a number of years back?

Answer. Poor, but respectable.

14th interrogatory. Did you visit them?

Answer. I cannot say that I did.

15th interrogatory. Any of them?

Answer. Yes, sir; I have. What I mean by visiting is, I have been in the house, and sit and talk with them on business.

16th interrogatory. Is not your estimate of the rental value of this property controlled by their juxtaposition to the soldiers' barracks or camps?

Answer. No; it is not.

17th interrogatory. Did not you so state in your examination-in-chief?

Answer. No, sir. During the examination-in-chief I stated, as I

77 thought outside of testimony, that the storehouse would rent for almost any price, being near the barracks, and I state that now in evidence.

18th interrogatory. When were those barracks erected?

Answer. About the first part of 1862.

The witness correct' himself, and says it was in 1862.

19th interrogatory. Did not Mrs. Corcoran, acting under your advice, accept the terms you made for her with Mr. Handy?

Answer. Yes, sir.

20th interrogatory. Why were the tenants of these houses unwilling to recognize Mr. Prout as their landlord?

Answer. Because they never knew him.

21st interrogatory. Did you often go into those houses to sit and talk on business, or for any other purpose, during the last ten years?

Answer. I have repeatedly.

22nd interrogatory. At the time, and after the death of Mrs. Mallion, and up to the death of Vandore Mallion, what were the circumstances of the complainant, Mary Ann Roby?

Answer. I know she bought a two-story frame house.

78 23rd interrogatory. What did she do for a living by repute?

(Objected to by Mr. Totton for complainant.)

Answer. She was kept by a man by the name of Luckett.

24th interrogatory. Does she still own the house?

Answer. I do not know whether she owns that house or not.

25th interrogatory. During the period of Mrs. Mallion's death and Mr Mallion's death, did she follow any reputable employment?

Answer. Not to my knowledge.

26th interrogatory. Did you not during that time know where she then lived? If yes, state where.

Answer. She lived on N st., south, between New Jersey avenue and South Capitol street.

Reëxamined by Mr. Totton for complainant.

I do not know of my own personal knowledge that Luckett kept her. But I have seen him in the house, and such was the reputation.

W. A. MULLOY.

Sworn and subscribed before me this 7th day of February, 1866.

J. J. JOHNSON,
Special Commissioner.

79 *Deposition of Charles A. Vermillion for complainant.*

And the said CHARLES A. VERMILLION being about the age of 41 years *of age*, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine said Charles A. Vermillion, and he did thereupon depose, testify and say as follows:

In answer to interrogatories propounded by Enoch Totton of counsel for complainant.

My name is Charles A. Vermillion; I reside in Washington City; I was born here; I know the parties to this suit; I knew Jane Mallion and Vandore Mallion both well; they lived on South A street, between 3rd and 4th streets east; I have known Mary Ann Roby about twenty-five years or more; the way I first became acquainted with Mary Ann Roby, I was carrier of the Baltimore Clipper, and used to carry
80 the paper to her house; I suppose she was married when I first got acquainted with her; she sometimes went by the name of Roby, and sometimes by the name of Mallion; she lived with Mrs. Mallion when I became acquainted with her; Mr. Roby has been dead some time; I have always heard Mrs. Roby call Mrs. Mallion mother, but I never heard Mrs. Mallion call her daughter; Mrs. Roby, after I became acquainted with her, used to live in the middle house, back room, joining Mrs. Mallion's; I was well acquainted with the parties; I never was in there much; I lived around there myself, and have always heard her call Mrs. Mallion mother; I mean I rented from Mrs. Mallion; I used to act sometimes as agent for Mr. Mallion for his property, but not for this property in controversy; Mrs. Roby at one time did receive money from me for rent; this was in August, before the old woman died; Mrs. Mallion died about thirteen years ago; I paid the money to Mrs. Roby in the presence of Mrs. Mallion; Mrs. Mallion told me
81 that she never had any children by Mr. Mallion; I understand that Mr. Van Reswick controls the rents of the premises, and rents them as the agent of Robert Prout, the defendant.

Cross-examined by Mr. Bradley for the defendant:

I knew Mrs. Roby when she lived with Luckett; they lived together as man and wife in Mrs. Mallion's house; in the middle house; they next lived in a house belonging to old man Edmund Reily; then they lived on 3rd street east, in Reily's house again; I think they next moved somewhere near Blagdon's wharf; I know she bought a house after the death of the old woman, because she told me her mother gave her the money and I counted it for her; I know it was between six and seven hundred dollars, gold, silver, and paper; she had the money, as near as I can come at it, two or three days before her mother's death; I do not know now where she lives; she told me that Van Reswick advised her to sell it, as they were going to cut down the street and lay a
82 pavement; I know it don't belong to her now as she is very poor now; I was told she is very poor; she told me herself last summer that she would have to go to the poor-house; I cannot tell you how long it has been since Vandore Mallion died; he died at the hospital; I know Mrs. Roby pretty well; she use' to deal with me when I kept store on the hill; I do not know that she ever was married to Roby; all that I know about it is what her people told me; they said she was married by Rev. Father Van Hosse; he was a Catholic priest; I knew this son long before President Polk was elected; this son was a good, smart boy; I do not know his age; he always went by the name of Tom Roby; I

knew Mrs. Roby before I knew her son; I think I knew her between
1838 and 1839; I did not know Roby; I was not personally acquainted
with her in 1839, but I heard people say she was a pretty wild girl;
83 she was a young woman when I first knew her; she was pretty
and wild.

C. A. VERMILLION.

Sworn to and subscribed before me this 2nd day of March, 1866.

J. J. JOHNSON,
Examiner.

Deposition of Phillip H. Reinhard for complainant.

And the said PHILLIP H. REINHARD, being about the age 38 years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine said Phillip H. Reinhard, and he did thereupon depose, testify, and say as follows, in answer to interrogatories propounded by Enoch Totton, esq., of co'nsel for comp'ainant:

My name is Phillip H. Reinhard. I am of co'nsel for the com-
84 plainant. I have made inquiry of a great many persons who might have known something of Jonathan Porter, who was named as trustee in the lease of the premises in controversy to Jane Mallion, and was referred to some five or six old residents of this District, who, it was stated, must know, if anybody, of his whereabouts, &c. And, in calling upon those persons, neither of them know anything of him for thirty years last past; and I can find no one who knows anything of him, after having made diligent search.

P. H. REINHARD.

Sworn to and subscribed before me this 2nd day of March, 1866.

J. J. JOHNSON,
Examiner.

85 *Deposition of Mary Ann Roby for complainant.*

And the said MARY ANN ROBY, being about the age of 60 years, and, being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully exam*an*ine said Mary Ann Roby, whereupon she depose, testify, and say as follows, in answer to interrogatories propounded by E. Totton, counsel for complainant:

I brought this suit. I do not remember my age; I near on to sixty years of age; I was born in Baltimore. Before I was married, my maiden name was Mary Ann Rodgers. I reside, at present, on the corner of N street and New Jersey avenue, in this city. I came here a small child, I just could remember, and have lived here ever since. My mother's name, when she died, was Jane Mallion. Her husband was Vandore Mallion. I cannot tell when my mother married Vandore
Mallion—I was quite small. She married him before I came to
86 Washington. I cannot tell when my mother died; it is set down in the Bible. I think it has been over twelve years since my mother died. I attended my mother in her last sickness; she was not sick more than two months. I had been married at the time of my mother's sickness, but was then a widow. My mother treated me as

her own daughter. I asked for nothing but what I got it. She always called me her daughter. She never called me otherwise than her child. Mr. Mallion never treated me very good. He never said anything very cross; but when he wanted me to do little things for him, I would be obstinate, and then he would get a little out of temper. I knew he was only my stepfather, and that was the occasion of my obstinacy. I cannot read or write; I went to school three years, too. I am in very poor circumstances, at present, and my health is very poor. I do not own any property outside of these in dispute. At one time I owned a house and lot; it was sold for taxes; I had paid the taxes.

87 Mr. William Van Reswick bought the house; his widow owns it now. My mother gave me the money to buy that house about one week before she died. [I am confident that it was her money. She always kept her money, and Mr. Mallion kept his.]

(Mr. Bradley objects to the sentence enclosed in brackets.)

1st interrogatory. What did your mother say to you when she gave you that money?

(Objected to by Mr. Bradley.)

Answer. She told me that she give it to me, and that no one could take it from me, and that it would help me.

2nd interrogatory. Did she say anything to you about Mr. Mallion's getting it?

(Objected to by Mr. Bradley.)

Answer. No, sir. I never knew Jonathan Porter. I do not remember anything about the execution of a lease from Mr. Porter to my mother.

88 3rd interrogatory. Did you ever hear your mother state, in her lifetime, the reason why that lease was executed to Jonathan Porter, in trust for her?

(Objected to by Mr. Bradley.)

Answer. The old man always threatened to make over what he had to the priest. She said what she had earned he should not make over to the priest. She said the reason she had it made in Porter's name, was that her heirs should have the benefit of it. She has always told me that it was for me; she wanted me to have it, and no one else. I do not know when my mother took possession of the property in dispute. I was quite a small child. After my mother's death, Vandore Mallion continued to hold the property. I do not know how long. I moved away, as I did not like the old man, and I thought I could get along without it, and I did not care much about it. I thought I could do without it until after his death, and then I would go to work and try to get it. I do not know when Vandore Mallion died. He died at the infirmary. It was some time before I knew it.

89 (Mr. Totton, of counsel, herewith offered a paper writing, which said paper writing is herewith filed, and marked E'hibit "A.")

Cross-examined by Mr. Bradley, counsel for defendant.

I know Henrietta Waters. The first time I ever saw her was in her mother's house. I was quite a girl then. This was long after my mother married Mr. Mallion. We had been here a long time before I ever saw her. I can give no idea when Mr. Mallion died. I know the Rev. Mr. Prout, the defendant, when I see him. I went to see Mr. Prout several times, and talked with him every time I went to see him. After my mother's death, I did not go back to live with Vandore Mallion. I kept house with my son. The reason I did not go back was the old man was so cross; he did not want anybody there but himself. He hardly wanted

himself. I did go once while he was sick, to see him. We would talk whenever we met.

90 1st cross-interrogatory. Did you ever say to anybody that on the death of your mother, that Vandore Mallion imposed upon you, and made you believe that he, Vandore Mallion, on the death of your mother became the owner of this lease on this property?

Answer. No, sir; I never did.

2nd cross-interrogatory. To whom did you first set up this claim?

Answer. To Mr. Reinhard. Mr. Reinhard was in a neighbor's house, and I mentioned it to him.

3rd cross-interrogatory. Did you ever demand of the defendant the restoration to you of the possession of this property; if so, when and where; and believe and hope that he would do so?

Answer. Yes, sir; summer before last and last summer.

4th cross-interrogatory. Did you ever say that Mr. Prout intended to defraud or cheat you?

Answer. I never said so about Mr. Prout. He was a good man; he was a father to the orphans and a husband to the widow. There

91 never was a word passed between Vandore Mallion and myself at the time of the last sickness of my mother about this money. He was as kind to me as if he had been my father; nor after her death either. He knew I had this money as well as I knew it. The amount, as near as I can come at it, was nine hundred dollars. I bought a house with it on N street south, between New Jersey avenue 1st street. I got a deed for the house from Thomas Blagdon; it was a frame house, containing three rooms, two down stairs and one up. I paid four hundred and fifty dollars for it. I lived there six or seven years. I kept boarders and sewed for a living. I was living in this house when Vandore Mallion died, but do not recollect how long I continued to live there after his death. Over four years ago, I moved away. Samuel Gates, and James Doman, John Jones, and another young man named Drury, boarded with me for a short time. I am sure that was all. I took boarders about a couple of years.

[5th interrogatory. Did you ever know a man by the name of Ben Luckett?

(Objected to by Mr. Totton.)

92 Answer. I never knew Ben Luckett; I never saw a man by the name of Ben Luckett; I never lived in that house with a man by the name of Luckett. That has nothing to do with my business.]

(Mr. Totton objects all enclosed in brackets.)

her
MARY + ANN ROBY.
mark.

Sworn to and witnessed before me this 9th day of May, A. D. 1866.

J. J. JOHNSON,
Special Examiner.

And to wit, on this 9th day of May, 1866, the complainant, through her counsel, Enoch Totton, esq., herewith rest, her case.

93 *Deposition of John T. Roby for complainant.*

And the said JOHN T. ROBY, being about the age of 33 years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, did testify and say as follows:

My name is John T. Roby. I am about thirty-three years of age; was born in the city of Washington, and have always lived in this city. I am now the plaintiff in this suit. My mother, Mary Ann Roby, died in this city about the 16th day of November, 1866. I am the only child of Mary Ann Roby; the only one she ever had. I have been married about twelve years, and my mother has been living with me nearly all the time since my marriage. I partially supported her during this time. [I remember Mrs. Mallion; I always acknowledged her my grandmother, and always called her grandmother. Mother always called her mammy.]

(The statements in brackets objected to by Mr. Bradley, because it is not rebutting testimony.)

94 I never have heard of my mother, Mrs. Roby, being called Mary Ann Silas.

Cross-examined by J. H. Bradley, jr., counsel for defendant:

I am a laborer. I do not own the house in which I live, or any other house. My mother married my father in Washington. His name was Theodore Roby. I don't remember my father. He died when I was small. I have heard my mother say that Father Van Hosse, pastor of St. Peter's Church, performed the ceremony of the marriage. This church is the Roman Catholic church, on Capitol Hill, in this city. I think Mrs. Mallion died about thirteen or fourteen years ago. I can't tell what my mother's name was before she was married. I knew Vandore Mallion. She didn't bear his name any more than people would call me by your (Mr. Bradley) name, if I were living in your house. They used to call me Tom Mallion, sometimes. I never saw my mother's marriage certificate. My mother bought a house directly after Mrs. Mallion's death; and she and I went to live in it together.

his
JNO. T. + ROBY.
mark.

95 Sworn to and subscribed before me this 15th day of December, A. D. 1866.

JNO. J. JOHNSON,
Ex'r in Chancery.

Deposition of Henrietta Walters. Reëxamined for complainant.

And the said HENRIETTA WALTERS, being the age of 52 years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine said Henrietta Walters, and she did thereupon testify, depose, and say as follows:

In answer to interrogatories put by E. Totton, esqr., for complainant.

Question. State whether or not you were intimately acquainted with Mrs. Mallion and the family?

(Objected to by Mr. Bradley.)

Answer. I was. I can safely say I have been acquainted with the family for 30 years. During this time I never heard of Mary
96 Ann Roby being called Mary Ann Silas. She never went by any other name than Mary Mallion. I think if she had been called Mary Ann Silas I should have been as likely to have heard it as any other neighbor. I know Mrs. Normand. I believe she and Mrs. Mallion were intimate. But I believe the old man never would allow her to come into the house if he knew it.

Question. State whether or not you ever heard Mr. Mallion give his reasons for forbidding her from coming to his house; and if you have, what they were?

(Objected to by Mr. Bradley, jr.)

Answer. It was on account of Mrs. Normand's children. [He said he did not want her to come there after turning off her white children for her black ones. Mrs. Normand had two black children; one was very dark, and called Richard Jones, that never goes for a white man. The other reason was, he said she was a tattler, and always carried so much news out of his house.]

(Mr. Bradley objects to all of answer enclosed in brackets.)

97 Question. Was Mrs. Normand considered in the neighborhood as a talebearer and a tattler?

(Objected to by Mr. Bradley, jr.)

Answer. She was. I knew Mr. Roby. I was not much acquainted with him. I never was at his house. Mr. Roby and Mary Ann Roby lived together as man and wife until his death. They had one child, named Thomas.

Cross-examined by Mr. Bradley, jr., for defendant:

They lived together as man and wife, in the house now owned by Mr. Handy, once owned by Mr. Beck. It is on 4 st. east, between South A and East Capitol streets.

Question. Don't you know that Mary Ann Roby and a man other than Roby lived together as man & wife?

(Objected to by Mr. Totton, for complainant.)

Answer. I do not.

Question. Have you kept up your acquaintance with Mary Ann Roby—lived in her neighborhood, on Capitol Hill, for the past 30 years?

Answer. She did not live on Capitol Hill all the while. It has been some 16 or 17 years since she moved off the hill, and I have seen
98 but very little of her since. I would see her now and then; and I knew her as an acquaintance. I do not know what she was doing of.

Question. Don't you know that she and a man named Luckett lived together, between Capitol Hill and the navy yard, for a long time after Mrs. Mallion's death, in a house which Mary Ann claimed she owned, as man and wife?

Answer. I never knew any house which she claimed; I never knew her in any house; I never knew any Luckett.

Question. What is your occupation?

Answer. I have some boarders, and I take in sewing.

Question. Lady boarders?

Answer. No, sir.

Question. *Does* gentlemen visit ladies at your house?

Answer. No, sir.

Question. Is a gentleman staying at your house with a lady who is not his wife?

Answer. No, indeed.

Question. How long is it since the lady left your house?

Answer. There is nobody staying at my house except my own family.

99 Question. Do you know Mr. W'm M. Mulloy and Charles McName for many years?

Answer. I have.

[Question. Who constitute your family?

Answer. I have two children when they are at home—daughters.]

(Mr. Totton objects to all enclosed in brackets.)

Question. And your name is and always has been Miss Henrietta Walters?

Answer. That is my name; I never was married.

Question. Have you not permitted in your house prostitution with your own daughters?

(Objected to by Mr. Totton.)

Answer. The witness declines to answer this question.

her
HENRIETTA + WALTERS.
mark.

Sworn to and subscribed before me this 27th of December, A. D. 1866.

J. J. JOHNSON,
Ex'r in Chancery.

100 *Deposition of William M. Mulloy for complainant.*

And the said WILLIAM M. MULLOY, being about the age of 46 years, and being by me first sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine said William M. Mulloy, and he did thereupon depose, testify, and say as follows:

In answer to interrogatories put by E. Totton, esq., for complainant:

I never in my life heard Mary Ann Roby, the complainant in this cause, called Mary Ann Silas; I never heard her called by any other name but Mary Ann Mallion until she married Roby.

Question. State whether or not you ever heard Mrs. Mallion or any other person say that Mrs. Roby was Mrs. Mallion's niece?

Answer. I never did.

(Objected to by Mr. Bradley, j'r, because the pedigree is the original of the subject of inquiry; and also because it is not responsive to the defendant's testimony-in-chief.)

101 Question. Do you know Jane Normand?

Answer. I know old Mrs. Normand.

Question. What kind of reputation did she bear, and in what particular?

(Objected to by Mr. Bradley, j'r.)

Answer. Very bad; she had different sets of children, some white and some black.

Question. How many children did Mrs. Roby have?

Answer. But one to my knowledge; that is Thomas, now a man grown.

Cross-examined by J. H. Bradley, j'r, solicitor for defendant:

Question. How do you know that Thomas is her child?

Answer. He was a pretty bad boy, and I use' to attend to business for her, and she called him her child; his father died when he was quite young.

Question. Was Mary Ann Roby reputed to be, or was she within your own knowledge a chaste woman, up to the time that you first knew this man who calls himself Thomas Roby and claims to be her son?

(Objected to by Mr. Totton, for complainant.)

Answer. So far as I know or ever heard.

102 Question. Where was she living at the time of his birth?

Answer. My impression is, that she was either living in the house with Mrs. Mallion, or in the one adjoining.

Question. How long is it since Mrs. Normand ceased to reside on Capitol Hill?

Answer. As much, or more than eighteen years. As to her truth and veracity, I know nothing. I was not asked that question.

W. A. MULLOY.

Sworn to and subscribed before me this 16th day of January, A. D. 1867.

J. J. JOHNSON,
Ex'r in Chancery.

P. H. REINHARD, being reëxamined by E. Totten, esqr. for complainant, saith:

I am one of counsel for complainant in this cause:

Question. State whether or not you at any time looked for a record of Mrs. Roby's marriage; and if yea, state why, where, and what the result was.

103 Answer. Mrs. Roby informed me that she was married by father Van Hosse, at the Catholic church on Capitol Hill. I called upon father Boyle, the present pastor, who kindly gave me the marriage records of the church, and aided me in the search. We found the record, all but two or three pages of the record, either destroyed or torn out; it was not there. Father Boyle stated me that that was just the way in which father Van Hosse kept all his papers and documents generally. When I said the record was destroyed, I mean that part of it pertaining to the administration of father Van Hosse, as pastor of the church.

(Objected to by Mr. J. H. Bradley, jr.)

P. H. REINHARD.

Sworn to and subscribed before me this 16th day of January, A. D. 1867.

J. J. JOHNSON,
Ex'r in Chancery.

The complainant here closes his case.

J. J. JOHNSON.
Ex'r &c.

104 *Exhibit "A" referred to in the testimony of John T. Roby for Complainant.*

William Prout to Jonathan Porter, trustee of Jane Mallion. Lease recorded May 9th, 1820.

This indenture, made the fourteenth day of April, in the year of our Lord one thousand eight hundred and twenty, between William Prout of the city of Washington, of the one part, and Jonathan Porter, *or* trustee of Jane Mallion, of the same place, of the other part, witnesseth, that the said William Prout in consideration rents, covenants, and agreements hereinafter mentioned and reserved on the part and behalf of the said Jonathan Porter, trustee, as aforesaid, to be paid down and performed, hath demised, leased, and to farm let, and by these presents doth demise, lease, and to farm let unto the said Jonathan Porter, trus-

tee as aforesaid, his executors, administration and assigns, all that
105 lot, piece or portion of ground lying and being in the city of Washington, and contained in the square designated on the plat or survey of said city, as square numbered seven hundred and eighty-seven; beginning for same one hundred and eig'ty feet from the southwest corner of said square and fronting on A street South, and running thence north one hundred and ten feet; thence east twelve feet; thence north eighteen feet one inch; thence east thirty-seven feet two and one-half inches; thence south one hundred twenty-eight feet one inch, to the line of South A street; thence with the line of South A street forty-nine feet two and a half inches to the beginning.

To have and to hold the said piece or portion of ground with the appurtenances to him, the said Jonathan Porter, in trust for the use and benefit of the said Jane Mallion, her heirs and assigns, for and during and until the full end and term of ninety-nine years from the eleventh day of April, one thousand eight hundred and twenty, fully to be complete and ended, to be renewed and renewable from ninety-nine
106 years to ninety-nine years forever to the said Jonathan Porter, trustee as aforesaid, his heirs, or assigns, yielding and paying therefor, yearly and every year, on the eleventh day of April, during the term of this present lease, and during the term of any and every other lease made for a renewal hereof, unto the said William Prout, his heirs, executors, administrators, or assigns, the sum of twenty-five dollars and eighty cents, current money, clear of all taxes, charges, rates, or assessments whatsoever, which may become due on the said piece of ground. And it is expressly agreed and understood that if the said yearly rent of twenty-five dollars and eighty cents, hereby reserved, or any part thereof, shall remain unpaid at the expiration of sixty days after the same shall become due, and not sufficient effects on the premises whereon to levy the said rent, it shall and may be lawful for him, the said William Prout, his heirs or assigns, in and upon the premises hereby granted, with the appurtenances, to reënter, and him, the said Jonathan Porter, trustee as aforesaid, his heirs, executors, admin-
107 istrators, or assigns, from them to eject, remove, and expel, and the same again to repossess and enjoy in the same full, ample, and unlimited manner as if this indenture had never been executed. And it is also covenanted and agreed that if the said Jonathan Porter, trustee as aforesaid, or the said Jane Mallion, her heirs, or assigns, do and shall at any time hereafter pay to the said William Prout, his heirs, or assigns, the sum of four hundred and thirty dollars, over and above all rents for said piece of ground that may then be in arrears, that then and in such case he, the said William Prout, his heirs, and assigns, shall and will make and execute a good and sufficient deed of release in fee-simple to the said Jane Mallion, her heirs, or assigns, of the above piece or portion of ground; and it is further covenanted and agreed that if the said Jonathan Porter, trustee as aforesaid, or the said Jane Mallion or any other person in his or her name and behalf shall, at any time or
times after during the continuance of this lease or any lease
108 made for the renewal hereof, pay unto the said William Prout, his heirs, executors, administrators, or assigns, any sum or sums of money over and above the sum of money which may at that time be due and in arrear for rent, towards the purchasing the said piece or portion of ground in fee-simple, that then immediately after the end of the ensuing year, the annual rent of twenty-five dollars and eighty cents in future shall be abated in the same proportion which the said sum or sums of money so paid bears to the sum of four hundred and thirty dol-

lars, the fee-simple price of the said piece or portion of ground. And it is further covenanted and agreed that the said Jane Mallion shall be, and she is hereby, authorized to dispose of her interest in the herein-before-described lot or portion of ground by will and testament, and such bequest shall be deemed and taken to vest fully such title as this instrument conveys, subject to all its provisions for payment of rent, of taxes, et cetera.

109 In testimony whereof the said William Prout doth hereby subscribe his name and affix his seal, the day and year first above written.

WILLIAM PROUT. [SEAL.]

her
JANE + MALLION. [SEAL.]
mark.

Signed, sealed, and delivered in the presence of—the word feet, 12th line from the begi ng, first interlined—

JAMES YOUNG.
ISAAC HALL.

DISTRICT OF COLUMBIA,
County of Washington, to wit:

On this fourteenth day of April, 1820, William Prout acknowledged the foregoing instrument of writing to be his act and deed, for the purposes therein expressed before the subscriber, a justice of the peace for the county aforesaid.

JAMES YOUNG.
BENJAMIN MORE.

I, R. M. Hall, register of deeds for the county of Washington, in the District of Columbia, do hereby certify that the foregoing
110 and annexed is a true copy of a lease from William Prout to Jonathan Porter, trustee of Jane Mallion, as recorded in liber A. Y., No. 49, folios 54, 55, 56, & 57, one of the land records for Washington County, in the District aforesaid.

Given under my hand and private seal—no official seal being provided—this 18th day of October, A. D. 1865.

R. M. HALL, [SEAL.]
Register.

111 In the supreme court of the District of Columbia.

MARY ANN ROBY, COMP. } For defendant.
vs.
ROBERT PROUT, DEF'T. }

DISTRICT OF COLUMBIA,
County of Washington, ss:

Be it remembered that 17th day of August, A. D. 1866, I, John J. Johnson, special examiner in chancery, did cause to be personally present at the office of Joseph H. Bradley, j'r, in the city of Washington, in said District, Jane Normand, Edward G. Handy, and John H. Wise, to testify on the part and behalf of the defendant, in a certain cause now depending in the supreme court of the District of Columbia, wherein Mary Ann Roby is complainant and Robert Prout defendant.

J. J. JOHNSON,
Sp. Ex'r in Chancery.

112 *Deposition of Mrs. Jane Normand for defendant.*

And the said Jane Normand, being about the age of 82 years, and being first *only* sworn by me to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did thereupon examine said Jane Normand, and she did testify, say, and depose as follows:

In answer to interrogatories put by Mr. Bradley, jr, counsel for the defendant:

I knew old Mr. Vandore Mallion and his wife. They lived on Capitol Hill, and I lived in one of their houses. I knew a young girl living in the family named Mary Ann Sallus. I do not know whose child this was. I heard the old lady, Mrs. Vandore Mallion, say that this girl was an adopted daughter; that she adopted her in the city of Baltimore. This girl, Mary Ann Sallus, intermarried with a man named Roby.

When Mrs. Mallion was provoked with this girl she would tell
113 people how kind she had been to Mary Ann in raising her to work.

I heard Mrs. Mallion say that she had a lease on this property from Mr. Prout for ninety-nine years. I never heard Mrs. Mallion say that this was her child. She could not have said so, because she had always said that she had adopted her. Mrs. Mallion told me when she, the girl, was two or three months old, she took her and raised her by feeding her through the thumb of an old buckskin glove.

Cross-examined by Mr. Totton:

I was well acquainted with Mr. Mallion and his wife, because I lived a long time on the hill in one of their houses. When I first knew this girl, I think she was about eight or nine years of age. She had been here from Baltimore sometime before I knew her. It might have been the first or second year that I became acquainted with Mrs. Mallion, that I heard her say that she had adopted this girl. I cannot say
114 positively. I have heard Mrs. Mallion say more than once when she was mad with Mary Ann that she had adopted her, and how kind she had been in raising her. Mrs. Mallion never said one word to me about her property. Mrs. Mallion told me that Mr. Mallion had made it all over to the priest, but that she got the paper and destroyed it. He again made it over to the priest, as I am informed. There never was any difficulty between this girl and myself. I never have difficulties with any one. I reside, at present, on the corner of 10th and M streets, in this city. I have been living in that neighborhood about fifteen or sixteen years. I was present at Mrs. Mallion's funeral. I do not know the year when she died. Things that I have done a week or so ago, I cannot recollect as well as things occurred years ago. I cannot remember as well now as I use' to. I do not remember recent occurrences like I use' to. When you get as old as I am, you probably
115 will not remember as well as I do. I cannot remember, of course, like I use' to. I will tell the truth, because I have a greater judge to stand before than I have here, and it cannot be expected to be long before I do. I never heard that there was a law-suit between Mrs. Roby and Mr. Prout. No one never talked with me about this suit. I did not know there was a suit. As far as I saw, Mrs. Mallion treated this girl very kind. She always called her Mary Ann. I never, to my knowledge, heard Mrs. Mallion called this child daughter. My memory is not at fault about this. If I had heard her say so, I would tell you. I heard Mrs. Mallion say she was a widow before she married Mr. Mallion. I never heard her say how long she remained a widow before she married

Mallion. I heard her say that her first husband was named Rodgers. I heard her say that she had one child by her first husband. I do not know whether it lived, or how long it lived. I never heard her say anything about it. She did not say whether it was a boy or a girl.

116 I never heard Mrs. Mallion say whether it lived or died. I do not know what she was called in the neighborhood. I always heard her called Mary Ann Sallus. Mrs. Mallion use' to call this girl Mary Ann Sallus. Some use' to call her Mary Ann Mallion, because Mrs. Mallion raised her. I use' to know Mrs. Roby when I lived on the hill, which has been about twenty years ago. I have seen her once since at market. If I were to see her now I am sure I would not know her, it has been so long ago. I never heard Mrs. Mallion call this girl Mary Ann Mallion. I have heard her call her Mary Ann Sallus. That was the girl's mother's name. They all came from Baltimore. I could not swear that this was her mother's name only from what I heard. This girl always called Mrs. Mallion mother.

her
JANE + NORMAND.
mark.

Sworn to and witnessed before me this 17th day of August, A. D. 1866.
J. J. JOHNSON,
Special Com'r.

Adjourned till next Wednesday, the 22nd day of August, at 11 o'clock a. m.

J. J. JOHNSON,
Special Com'r.

117 *Deposition of Edward G. Handy for defendant.*

And the said EDWARD G. HANDY, being about the age of 45 years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did thereupon examine said Edward G. Handy, and he did testify, depose, and say, as follows:

In answer to interrogations put by Joseph H. Bradley, j'r, for defendant.

I know the parties to this suit; I reside on Capitol Hill; I resided there about 12 years the last time, and several years previous to that; this was some 20 years ago. I was born and raised in this city; I am at present a justice of the peace; I know the property in dispute in this case; I have known this property for the last twenty years; it is adjoining my own property, where my office now is. For last twelve years

118 I have made myself acquainted with the condition of the property. There is one lot with three old bui'dings on it; at this time the buildings are in better repair than they were twelve month' ago. At the time Mr. Prout commenced to collect rent for this property two of the buildings I did not consider fit to live in. The brick work had given way, and I feared that they would fall down. The other, or the one on the alley, was in better condition, and was occupied by Mrs. Corcoran; her husband had gone away then. Since December last there has been some improvements put upon these houses by Mr. Prout's agent; to what extent I cannot say. I consider the lot worth about twenty-five cents a foot at this time. The buildings are worth nothing. Some few years back I bought the adjoining part of lot, from the heirs of the same family, for fifteen cents a foot. About

two years ago, I think, I am not certain as to time, I made it my business to ascertain the condition of the property, as I wished to purchase it. The persons living there were paying no rent to any
119 one. I proposed to purchase the property from Mr. Prout, which he declined to do on account of the condition of the leasehold estate, or until he could get legal possession. He declined to do anything. Sometime after that Mr. Prout called at my office, which is adjoining the property; made out a bill of the amount of rent due him for ground rent, together with taxes which he had paid, and made an order of distrain upon it, and stated that he was going down home, and asked me to give it to an officer, which I did. The officer levied on the buildings, and as I wished to purchase them, after the levy was made, I called upon Mr. Bradley, paid him a fee and asked his legal opinion about the property. Mr. Bradley informed me that the levy was illegal, because that the property levied upon was a part of the realty, and that he, Prout, had no power to levy for the taxes. Upon which information I informed the officer, and further proceedings were
120 stopped. The officer that made the levy was John H. Wise. I know Mrs. Margaret Corcoran and W'm A. Mulloy, and I am very friendly with both of them. After the first distrain was stopped I informed the persons living in the houses, in a conversation, that the buildings would not be distrained for the ground rent; but that their personal effects were liable, and I had no doubt that Mr. Prout would order them taken when he came to the city. Last fall, I think it was, or winter, I understood that Mr. Prout was in the city. I informed Mrs. Corcoran, through a matter of friendship, that Mr. Prout was here and would distrain her effects. I suppose a few days, I think it was, Mr. Prout called at my house and I gave him full particulars of Mr. Bradley's opinion. I then made out a bill for him of the amount of rent due him, and I then wrote an order of distrain, which he signed, directed to John H. Wise, constable, to destrain upon any effects found upon the premises, which Mr. Prout requested me to give to Mr.
121 Wise. I handed it to him. He went into the property on the premises, came back and told me that there *was* no effects that he could levy upon. He made return of nulla bona, and gave me the paper, which paper I have carefully looked for, but cannot find it. I may possibly have given it to Mr. Prout; I do not know. Mr. Prout never authorized me, either directly or indirectly, to take steps to recover the possession of this property for him.

1st interrogatory. State, if you please, whether in any conversation with Mrs. Margaret Corcoran, you told her or gave her to understand, with the knowledge and consent of Mr. Prout, or acting as his agent, that if she would take her property out of the house and acknowledge Mr. Prout as her landlord, that it would be all right, and that she might move her property back. State fully all that passed between you and Mrs. Corcoran on this subject, and in what capacity you acted.

Answer. I had several conversations with Mrs. Corcoran. She having several small children to support, and her husband being absent,
122 I told her that all that Mr. Prout wanted was his rent, and that I had no doubt that if the rent was fixed in such a way that he could get some income from the property, so as to pay what was due him, from my knowledge of Mr. Prout, that I would guarantee that he would not distress her, and proposed to her to pay rent for the property so that he could get his money. This was my own friendly act, as the friend of both parties. I had no authority at all from Mr. Prout to say to her what I did.

Adjourned till one o'clock Friday next.

Met pursuant to adjournment, and the examination-in-chief of this witness was resumed by Mr. Bradley, j'r, who further depose' and says:

Question. Did you or not ever converse with Mr. W'm A. Mulloy, concerning the possession of these premises? If yea, state whether your communications with him were made by the authority of the defendant, Mr. Prout.

Answer. I had several conversations with Mr. Mulloy, who was
123 acting as the adviser and a friend of Mrs. Corcoran, about the property, in which I stated to him that I thought it was a hard case for Mr. Prout to be paying taxes and receiving no rent, and that I thought it was an act of justice for Mrs. Corcoran to pay rent to some one, as there *were* no other person who, in my opinion, had a better right to receive it. I thought she ought to pay it to him, or to his agent, Mr. Van Reswick. I had no authority from Mr. Prout. I acted in the matter on my own account, so far as that matter was concerned, for the purpose of getting the property in the hands of some one who would make some improvements or repairs upon it. As long as persons were living in it and paying no rent, I saw no prospect of having anything done to it.

Question. State, if you please, what became, if you know, of the tenants occupying the other two houses at the time Mrs. Corcoran removed some of her effects from the other house.

Answer. One of the houses was entirely vacant. The other, the middle house, was occupied, one room up stairs, I believe.

124 Mrs. Corcoran agreed to pay five dollars, I think, and the other one, as well as I can recollect, agreed to pay three dollars. There may have been another room occupied, but I am not positive. The parties offered to pay me the rent, but I declined to receive it, and told them I would inform Mr. Prout's agent, Mr. Van Reswick, who would collect the rent. I did so inform him, and went with him and requested, or told them who he was, and that he would collect the rent, which he did.

Cross-examined by E. Totton for complainant:

Question. Do you wish to purchase this property now?

Answer. If I could get a perfect title, and get the property cheap, I should be glad to purchase it; but as it now stands, I have repeatedly said that I did not want it and would not purchase it.

Question. Have you ever had any conversation with Mr. Prout relative to buying this property?

Answer. About the time the first levy was made, I proposed to
125 Mr. Prout to purchase the property. He declined to sell, because the heirs of Mallion, if any, could claim the property. If there were any heirs, they had the right to it, by paying the purchase-money, taxes, &c., as specified in the lease.

Question. Had you ever had any other conversation with Mr. Prout relative to purchasing this property?

Answer. I may have had, but I think not.

Question. Is there or is there not, an understanding between you and Mr. Prout, as to the price you shall pay for this property, if this suit shall be terminated in his favor?

Answer. No, sir; I neither directly or indirectly have had any understanding with Mr. Prout about the purchase of this property.

Question. Are you interested in any way in the event of this suit?

Answer. Nothing further than to see the place improved, which would necessarily enhance the value of my own.

E. G. HANDY.

Sworn to and subscribed before me this 14th day of September, A. D. 1866.

J. J. JOHNSON,
Examiner in Chancery.

126 *Deposition of John H. Wise for defendant.*

And the said JOHN H. WISE, being about the age of 45 years, and being by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matter at issue in said cause, I did carefully examine said John H. Wise, and he did thereupon testify, depose, and say as follows:

In answer to interrogatories put by J. H. Bradley, j'r, counsel for defendant:

I know the defendant by reputation; I have known Mary Ann Roby about twenty years; Mary Ann Roby called Mrs. Mallion aunt Mallion; Mary Ann Roby came to see me frequently, and said she ought to have this property in question, because Mrs. Mallion was her aunt; after the death of Mrs. Mallion Mary Ann Roby lived on N street, near New Jersey avenue; this is in my neighborhood, about three squares from my house; I never heard of her setting up a claim to this property as the only heir of Mrs. Mallion; she said Mrs. Mallion
127 raised her, and that Mrs. Mallion was her aunt; I served two distress warrants, the date of which I do not recollect, which were put into my hands by Mr. Ed. G. Handy, for Mr. Prout, and found no personal property—not enough to pay costs in the cases; Mary Ann Roby used to live with a man named Francis Luckett.

J. H. WISE.

Sworn to and subscribed before me this 19th day of September, A. D. 1866.

J. J. JOHNSON,
Special Examiner in Chancery.

NOTE.—E. Totten, esq., counsel for the complainant, having been duly notified to attend the taking of the testimony of this witness, but failed to appear; he is therefore entitled to cross-examine this witness, by recalling him at the expense of the complainant.

J. J. JOHNSON,
Special Examiner, &c.

Mr. Bradley, j'r, for defendant, herewith produced several paper-writings, which said paper-writings are herewith filed and marked Exs. R., P., 1, 2, 3, 4, 5, 6, 7, & 8.

JOHN J. JOHNSON,
Ex'r in Chancery.

128 DISTRICT OF COLUMBIA, *County of Washington, ss:*

I, John J. Johnson, special examiner in chancery, do hereby certify that, in pursuance of the annexed notice, the foregoing depositions were taken down, and by me reduced to writing, in the presence of, and from the statements of, the witnesses, at the time and place designated in the caption thereof, and were then and there by me read over to the witnesses, and by them subscribed in my presence, and in the presence of the solicitors of the respective parties to the suit, who were then and there attending; the witnesses having been by me first

only sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause, or in any manner interested therein.

J. J. JOHNSON,
Sp. Ex'r in Chancery.

129 *Order sending issue of facts to be tried by a jury.—Filed Oct. 3d, 1867.*

In the supreme court of the Dist. of Columbia.

JOHN T. ROBY
vs. } 552. Equity docket 7.
ROBERT PROUT.

This cause having come on to be heard, and the proceedings having been read and considered, it is thereupon, on this 3d day of October, A. D. 1867, ordered and adjudged, that the following issue be tried before a jury of the circuit court of this District, to wit:

Whether Mary Ann Roby, the original complainant in this suit, was born of the body of Mrs. Jane Mallion, the cestui que trust in the original lease from William Prout, lessor, to Jonathan Porter, trustee.

That, upon the trial of this issue, the complainant in this cause shall be plaintiff, and the defendant herein shall be the defendant, and
130 that the parties shall be at liberty to read to the jury all the depositions pertinent and competent to this issue.

The honorable judge of the said circuit court is respectfully requested to instruct the jury in relation to any questions of law which may arise on the trial of the said issue.

By order of the court.

Certificate of verdict of jury on issue to circuit court.—Filed March 27, 1868.

In the supreme court of the District of Columbia, Friday, March 27th, 1868. At law, No. 4351; issue from the equity court in 552, equity docket 7.

JOHN T. ROBY, PL'T'F,
vs. }
ROBERT PROUT, DEF'T.

Come as well the plaintiff, by his attorney, Mr. T[illegible]on, as the defendant, by his attorney, Mr. Bradley, j'r, and a jury of good and lawful men of this District, to wit, Elias A. Eliason, Benjamin Charlton, Hugh McGinnis, George R. Hall, Moses T. Parker, Frederick A. Klop-
131 fer, Richard Ballinger, Robert R. Pywell, Alfred R. Edelin, John Freeman, Enoch Morland, and William W. Cogswell, being sworn to try the issue joined between the parties in the equity court No. 552, docket 7, by order of said court, upon their oath say that Mary Ann Roby, the original complainant in this suit, was born of the body of Mrs. Jane Mallion, the cestui que trust in the original lease from William Prout, lessor to Jonathan Porter, trustee.

And thereupon the court orders that the said verdict be certified to the equity court.

A true copy.

R. J. MEIGS, *Clerk.*

Order for hearing at April rules, 186 .—*Filed March* 27, 1868.

On the motion of E. Totten, esq., solicitor for the compl't, it is, this 27th day of March, 1868, ordered that the above cause be set down for hearing, and placed on April calendar.

By the clerk.

132 *Decree for conveyance of real property, &c.—Filed July* 22, 1869.

In the supreme court of the District of Columbia, the 22d day of July, A. D. 1869.

JOHN T. ROBY
vs. } 552. Equity docket, 7.
ROBERT PROUT.

This cause came on to be tried this term, and was argued by counsel, and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed as follows, to wit:

That this cause be, and the same is hereby, referred to the auditor of this court to state and report an account between the complainant and defendant as to the rents and profits, and the expenditures for taxes and repairs, and purchase-money and reserved rents of the premises mentioned in the complainant's bill of complaint.

He shall ascertain the amount of rents and profits of the said
133 premises which were received by the said defendant or by any other person or persons, by his order or for his use, from the first day of January, 1865, to the date (or as near thereto as practicable) of such report.

The whole amount of such rents and profits shall be charged to the said defendant.

He shall ascertain the amount laid out or expended by said defendant for repairs or taxes on said premises, and the amount of the rent reserved by the terms of the lease mentioned in the bill of complaint herein, from the first day of January, 1865, to the time of making the said report, to be computed at the rate of $\$25\frac{80}{100}$ per annum.

The amount of such expenditures for taxes and repairs, and the amount of the reserved rents, as aforesaid, together with the sum of four hundred and thirty (430) dollars, the purchase-money provided for in said lease, shall be credited to the said defendant.

Said account shall be stated from the pleadings and proofs now
134 in the cause, and from such other proofs as the parties may produce before him, on giving such notice as the auditor may deem reasonable.

It is further ordered, adjudged, and decreed that, upon the coming in and confirmation of the report of the auditor, if there be found a balance due from the defendant to the complainant, the said defendant, Robert Prout, shall, within twenty days, or, if there be found a balance due from the complainant to the defendant, then the said defendant shall, within five days after the payment by the complainant of such balance so found due, execute in due form, and deliver to said complainant or his solicitor a conveyance, good and valid in the law, for and to the premises described in said bill of complaint, to wit:

All that piece or parcel of ground, lying and being in the city of Washington, known as lot four (4) in square numbered seven hundred and eighty-seven, (787,) and more particularly described as follows: Begin-

ning for the same on the north line of South A street, at a point one hundred and eight (108) feet from the southwest corner of said
135 square, and running thence north one hundred and ten (110) feet; thence east twelve (12) feet; thence north eighteen (18) feet one (1) inch; thence east thirty-seven (37) feet two and one-half (2½) inches; thence south one hundred and twenty-eight (128) one (1) inch to the line of South A street; and thence, with the line of South A street, forty-nine (49) feet two and one-half (2½) inches to the place of beginning.

That the defendant, if in possession, or any person or persons who have come in pendente lite, deliver possession of said premises to the complainant on the production of such deed of conveyance.

That, if a balance be found due from the defendant to the complainant, the said complainant have execution therefor, together with his costs in this suit, to be taxed by the clerk.

A. B. OLIN,
Justice.

136 *Appeal to the court in general term.—Filed July* 22, 1869.

ROBY *vs.* PROUT. } 552. Eq. doc. 7.

On motion of J. H. Bradley, j'r, an appeal to the general term from the decree of the chancellor this day passed is hereby entered, and the cause placed on the calendar of the general term for Sept., 1869.

By the clerk.

Proceedings before the supreme court of the District of Columbia in general term, commencing on the 1st Monday, 3d day of January, 1870.

MONDAY, *January 3d*, 1870.

By order of the chief justice, the opening of the court is proclaimed by the marshal. Present, the chief justice, Cartter, and Justices Olin, Fisher, and Wylie.

THURSDAY, *January 6th*, 1870.

Session resumed pursuant to adjournment. Present, Chief Justice Cartter, and Justices Olin and Wylie.

137 JOHN T. ROBEY *vs.* ROBERT PROUT. } 552. Equity docket 7.

Argued by Mr. Bradley for the defendant, appellant.

FRIDAY, *January 7th*, 1870.

JOHN T. ROBEY *vs.* ROBERT PROUT. } 552. Equity.

Argued by Mr. Totten, solicitor for appellee, and concluded by Mr. Bradley, solicitor for appellant.

SATURDAY, *February 5th*, 1870.

Session resumed pursuant to adjournment. Present, Chief Justice Cartter, and Justices Olin, Fisher, and Wylie.

ROBEY
vs. } 552. Equity docket 7.
PROUT.

Opinion of the majority, by Justice Wylie; Olin dissenting.

138 *Decree for conveyance of property entered in pursuance of decision of court in gen. term.—Filed.*

JOHN T. ROBEY, COMPL'T,
vs. } 552. Equity dock. 7.
ROBERT PROUT, DEF'T.

This cause came on to be heard at this term, and was argued by counsel; and thereupon upon consideration thereof, it is ordered, adjudged, and decreed as follows, viz:

That this cause be and the same is hereby referred to the auditor of this court to ascertain and report how much, if any, of the $430 00, the purchase price of the said lot, as specified in the original lease, remains due from the complainant to the defendant.

He shall ascertain, in the first place, the amount of rents and profits of the said premises which have been received by the defendant, or by any other persons by his order, or for his use, from the first day of January, 1865, to the date, or as near thereto as may be, of such report and charge the same to him.

139 He shall then ascertain the amount laid out or expended by said defendant for repairs and taxes on said premises and the amount of the rent reserved by the terms of the lease, from the said first day of January, 1865, to the time of making said report, to be computed at the rate of $25 80 per annum, and the sum of said expenditures for taxes and repairs, and the reserved rent, shall be added to the said sum of $430 00, the purchase-money of said lot, and the aggregate of those sums shall be counted as the credits of the said defendant.

Said account shall be stated from the pleadings and the proofs now in the cause, and from such other proofs as the parties may produce before said auditor, on giving such notice as he may deem reasonable.

It is further ordered, adjudged, and decreed that upon the coming in and confirmation of the report of the auditor, if there shall be found due a balance from the complainant to the defendant, then the

140 said Robert Prout shall within twenty days from the confirmation of said report and the payment of such balance so found due by the complainant to the defendant, and if there be found no balance due said defendant, then he shall within twenty days from the confirmation of said report execute in due form of law and deliver to said complainant, or his solicitor, a conveyance, good and valid in the law, for and to the premises described in said bill of complainant, to wit:

All that piece or parcel of ground lying and being in the city of Washington, and District of Columbia, known and distinguished on the plat of said city as lot numbered four, (4,) in square numbered seven hundred and eighty-seven, (787,) and more particularly described as

follows: Beginning for the same on the north line of South A street, at a point one hundred and eight (108) feet from the southwest corner of said square, and running thence north for one hundred and ten (110) feet; thence east twelve (12) feet; thence north eighteen (18) feet
141 one (1) inch; thence east thirty-seven (37) feet two and one half ($2\frac{1}{2}$) inches; thence south one hundred and twenty-eight (128) feet one (1) inch to the line of South A street, and thence with the line of south A street forty-nine (49) feet two and one half ($2\frac{1}{2}$) inches to the place of beginning.

That the defendants, if in possession, or any person or persons who may have come in pendente lite, deliver possession of said premises to the complainant, on the production of such deed of conveyance.

That the defendant pay the costs of this suit, to be taxed by the clerk.

SATURDAY, *February* 12, 1870.

Session resumed in pursuance of adjournment. Present, Justices Olin, Fisher, and Wylie.

ROBEY *vs.* PROUT. } 552. Equity.

The defendant, by his solicitor, Mr. Bradley, presents a written motion for a rehearing of this cause; and it is ordered that said motion be filed.

142 *Motion for rehearing.—Filed Feb'y* 12, 1870.

To the honorable the justices of the supreme court of the District of Columbia, holding the general term of January, A. D. 1870.

The defendant in this cause, Robert Prout, begs leave to move and does hereby move the court in the above-entitled cause, as follows:

First. To rescind and revoke the decree heretofore passed in this cause, on the 4th day of February, A. D. 1870, and to dismiss the complainant's bill of complaint.

And for cause shows—

1. That the plaintiff does not, in his original or supplemental bill, set up or pretend that at any time prior to the filing of the same he or the original plaintiff in this suit had in good faith performed or had offered or tendered himself or herself ready to perform his or her part of the contract to purchase, referred to in the pleadings in this cause; or

2. That he or the original plaintiff had ever accepted or noti-
143 fied the defendant that he or the original plaintiff had accepted the said offer of sale set forth in the pleadings herein, prior to the filing of the said original bill, or the supplemental bill; or that he the said original plaintiff had demanded of the defendant the execution of the said contract; or that the defendant had ever refused to execute the same; and in point of fact suffered and permitted the said property to be sold for taxes; that one William B. Todd was the purchaser thereof, and the same was redeemed by the defendant at his own cost.

3d. That the plaintiff does not set up or shew any sufficient excuse for his, or the said original plaintiff, not executing said contract, and that he or she was prevented in any manner by the defendant from executing the same, and in point of fact the defendant *be* from the filing of

the said original bill never opposed or sought to prevent the execution of the same.

Secondly. If the court shall refuse to dismiss the said original and supplemental bills, then in that event the defendant moves the
144 court to modify the said decree so as that the said plaintiff shall be decreed to pay to this defendant the said purchase-money in gold with interest in gold.

And upon the points involved in this motion, the defendant prays leave to refer to the case of Willard & Tayloe, decided by the Supreme Court of the United States at the present term of said court.

ROBERT PROUT.

JOS. H. BRADLEY, J'R.
Def'ts Sol'r.

I do solemnly swear that I have heard read the foregoing motion by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief, I believe to be true.

ROBERT PROUT.

Subscribed & sworn to before me this 12th of Feb'y, 1870.
R. J. MEIGS, *Clerk.*

145 SATURDAY, *March 5th*, 1870.

Session resumed pursuant to adjournment. Present, Chief Justice Cartter, and Justices Olin, Fisher, and Wylie.

ROBEY
vs. } 552. Equity docket 7.
PROUT.

The defendant's aforesaid motion for a rehearing, having been duly considered and fully understood, is overruled.

Whereupon the defendant, by his solicitor, prays an appeal to the Supreme Court of the United States, and is allowed.

Appeal bond to the Supreme Court U. S.—Filed June 2, 1870.

In the supreme court of the District of Columbia the 31 day of May, 1870.

JOHN T. ROBEY
vs. } In equity. 552. Dock. 7.
ROBERT PROUT.

146 Know all men by these presents that we, Robert Prout and Henry Bradley, are bound unto the above named John T. Robey in the sum of two thousand dollars, to be paid to the said John T. Robey, his executors or administrators; to which payment well and truly to be made, we bind orselves and each of us jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals and dated this 31 day of May, 1870.

Whereas the above-named Robert Prout has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia.

Now, therefore, the condition of this obligation is, that if the above-named Robert Prout shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

ROBERT PROUT. [SEAL.]
HENRY BRADLEY. [SEAL.]

Sealed and delivered in presence of—
AND'W B. DUVALL.

The foregoing bond is hereby approved this 2d day of June, A. D. 1870.

D. K. CARTTER,
Ch'f Justice.

147 DISTRICT OF COLUMBIA, *to wit:*

I, R. J. Meigs, clerk of the supreme court of the District of Columbia, do hereby certify that originals, of which the foregoing writings are true and complete copies, are on file and of record in the clerk's office of said court; and that said originals together constitute the record of the proceedings of said court in a certain cause therein depending and lately decided, entitled Mary Ann Roby vs. Rev. Robert Prout. 552. Eq. dock. 7.

In testimony whereof I hereto subscribe my name and affix the seal of said court this 10th day of December, 1870.

[SEAL.]

R. J. MEIGS, *Clerk.*
By L. P. WILLIAMS,
Ass't Clerk.

(Indorsement on cover:) No. 400. Robert Prout, appellant, vs. John T. Robey. Dist. of Columbia, sup. court. Filed 13th December, 1870.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 400.

ROBERT PROUT, APPELLANT,

vs.

JOHN T. ROBEY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED DECEMBER 13, 1870.

In the Supreme Court of the U. S.

ROBERT PROUT
vs.
JOHN T. ROBY.

On appeal from the Supreme Court of the District of Columbia, December Term, 1871.

The bill in this case sets up in substance that in the year 1820, William Prout, the ancestor of the defendant, by his indenture of lease dated 14th April, devised to one Jonathan Porter, trustee of Jane Mallion, (the ancestor of complainant,) *his executors, administrators, and assigns*, a piece of ground in the city of Washington, which is described in the bill; to have and to hold the said piece or portion of ground * * to the said Jonathan Porter, in trust for the use and benefit of the said Jane Mallion, her *heirs* and assigns, for and during and until the full end and term of ninety-nine years from the 11th day of April, 1820, fully to be complete and ended, to be renewed and renewable from ninety-nine years, to ninety-nine years forever, to the said Jonathan Porter, trustee, as aforesaid, *his heirs or assigns*, yielding and paying therefor yearly and every year on the 11th day of April * * unto the said William Prout, his heirs and assigns, the sum of $25.80 current money, clear of all taxes, charges, rates, or assessments whatsoever which might become due on said piece of ground. And it was also expressly agreed and understood that if the said yearly rent of $25.80 thereby reserved, or any part thereof should re-

main due and unpaid at the expiration of sixty days after the same should become due, and not sufficient effects on the premises whereon to levy the said rent, it should and might be lawful for him, the said William Prout, his heirs or assigns, in and upon the premises thereby granted to re-enter, &c., and repossess and enjoy in the same full, ample, and unlimited manner as if the said indenture had never been executed. And it was also covenanted and agreed that if the said *Jonathan* Porter, trustee, as aforesaid, *or* the said *Jane Mallion, her heirs or assigns*, should, at any time thereafter, pay to the said William Prout, his heirs or assigns, the sum of four hundred and thirty dollars over and above all rents for said piece of land that might then be in arrears, that then and in such case he, the said William Prout, his heirs and assigns, should and would make and execute a good and sufficient deed of release, in fee simple, to the said *Jane Mallion*, her heirs or assigns, of the said piece or portion of ground, (p. 1 and 2 R.)

The lease will be found on pp. 32–3–4 R.

The bill further sets up that the said Jane Mallion entered upon and possessed the said premises so conveyed under and by virtue of the said lease, and erected thereon valuable buildings, and made other improvements.

That she died about 30th October, 1852, leaving one child, a daughter, her only heir at law, by whom the original bill in this cause was filed; that Jonathan Porter died many years ago, leaving no heir or legal representative; that William Prout, the lessor, died many years ago leaving the defendant his heir at law surviving him.

That upon the death of Jane Mallion, her husband Vandora Mallion, who survived her and is now dead, assumed the control over the said premises, and wrong-

fully detained possession of them until some time about 4th of February, 1853, and received and appropriated the rents and profits to his own use.

That the Rev. Edward Knight, now dead, pretending to own the said premises by virtue of a certain last will and testament made and published by Vandora Mallion, about 4th of February, 1853, took possession of the premises and collected the rents until he *relinquished* the control and possession.

That while Mallion and Knight so wrongfully held the premises, the defendant received from them the ground rent, he well knowing that their possession was a fraud and a great wrong to complainant, and that Mallion was determined and intended to prevent her from obtaining any benefit from said premises.

That after Knight *relinquished* the possession of the premises, the defendant assumed the control over them and received the rents and profits, and wrongfully appropriated them to his own use.

That at all times before and after the *abandonment* of the possession of said premises by Knight, there was on the premises ample and sufficient effects whereon to levy and collect the said rent reserved by said lease.

That she is unable to read or write, and being utterly ignorant of the law of descents, was *imposed upon* and made to believe by Vandora Mallion and others in league with him, that he, Vandora, succeeded to the rights of his wife, Jane, and on her demise became the owner of the said leasehold estate.

That ever since the death of her mother she has been very poor—is now destitute—and dependent on charity for food and clothing.

[NOTE.—The proof is that her mother, just before her death, gave her $900, with which she purchased a comfortable dwelling house.]

That she continued to believe the false and fraudulent representations of Mallion and his confederates until after the *abandonment* of the said premises by Knight.

That she has repeatedly requested the defendant to restore to her the possession of the said premises, and to account to her for the rents and profits received by him or which he might have made by levying a distress; but he "well knowing her extreme helpless poverty and intending to defraud" her, refused and still refuses to do so; and pretends that she is not the daughter of Jane Mallion. [*Per con: see her evidence p.*]

Prayer for an account of all the rents and profits which have or might have been received by defendant out of the premises, and to credit him with the rent of $25.80 a year, and the purchase-money $430; and if the rents and profits with which he is so chargeable exceed the aggregate of these two credits decree, for surplus, and for a deed for the premises; if they fall short of such aggregate then on payment of the sum found due by complainant, a deed for the premises.

The defendant answered, (p. 6, 7, 8, 9, R,) admits the execution of the lease to Porter by his father, and that Jane Mallion entered into possession under it, the death of his father intestate; that by a division of the real estate made among the heirs, the piece of ground in controversy came to him, the defendant; that many years ago some inconsiderable improvements were made on the demised premises, but by whom or when they were made he does not know and requires proof; or that Jane Mallion is dead; or that complainant is her child; or that Porter is dead without leaving heirs; admits that Vandora Mallion entered into possession, but does not admit his possession was wrongful, and continued in possession until 4th of February, 1854. He says Van-

dora Mallion left a will, duly executed and admitted to probate, a copy of which he exhibits, marked R. P., No. 1, (p. 9 and 10.) and bequeathed to the Rev. Edward Knight all his property real, personal and mixed of every kind and nature, whatsoever and wheresoever situated, and he is informed and believes that the said Knight took possession of and received rent for said demised premises. He admits Knight afterwards relinquished the same. He admits that he received some rent from Vandora Mallion and said Knight during their respective occupation, and denies all knowledge that the possession of either of them was a fraud upon and a great wrong to complainant.

He admits that he assumed the control over the premises after Knight *abandoned and renounced all claim to them;* but denies that he received rent enough to pay the rent reserved by the lease, or that there was while he was so in possession, at all times on the premises ample and sufficient effects whereon to levy and collect said rent reserved.

He denies that complainant in person or by her agents, known to this defendant to be such, requested him to restore to her the possession of said premises, and account to her for the rent and profits thereof received by him; and denies intending to cheat and defraud complainant, or that to color such refusal, he gives out and pretends that complainant is not the daughter of Jane Mallion.

He answers the specific interrogatories at p. 8, and then proceeds to give his history of the case, setting up that he received no rent for the premises from the 2d September, 1859 to February, 1865, and the rent and taxes due in September, 1863, amounted to nearly $300 for which rent he ordered a distress, &c. The rent had

been due more than sixty days, and in 1865, he re-entered and took possession under the terms of the lease, and retained possession under that entry; that complainant had recently called upon and wished him to pay her something for her interest in said property, but this defendant then believed and now believes the said Jane Mallion had no child. Still he told her if she would pay him the arrears of rent, and his costs and charges for taxes, &c., so as to make him whole, he would give her a new lease, thereof on the same terms as the former one.

Will of Vandora Mallion, (p. 9,) duly executed, and admitted to probate in the proper court, 25 June, 1857, (p. 10,) gives everything he has after payment of debts and funeral expenses to the Rev. Edward Knight.

General replication, p. 10.

Complainant died, and bill of revivor filed 13 December, 1866.

Testimony was taken on both sides; first to show that Mary Ann Roby, was the daughter of Jane Mallion and the mother of John T. Roby.

HENRIETTA WATERS, "I have heard Mrs. Mallion say that she was a Rodgers before she married Vandora Mallion, and that she was a widow. Mrs. Mallion has told me that Mary Ann Roby was her child. I have frequently made dresses for that child, and then it was I heard her speak of this child. I heard her say that until this child was six weeks old, she never got a single nights rest. She always spoke of this child as her daughter. I have frequently heard her say that Mary Ann Roby was not the daughter of Vandora Mallion, but that it was her daughter. I have heard Vandora Mallion say that it was not his child, but always spoke of her as his wife's child. After the death of his wife he boarded with me three or

four different periods up to the time he went to the infirmary, (p. 13 and 14.)

JAMES LYNCH, (p. 16, 17,) knew Jane Mallion the wife of Vandora Mallion at least forty years, * * I have always been led to believe that Mary A. Roby was the daughter of Jane Mallion. I have heard him say she was not his daughter, but my impression is I have heard him say that she was his wife's daughter. She was generally looked upon in the neighborhood as being the daughter of Mrs. Mallion, I always thought that she treated her as her daughter. I have known her to look after her as a parent would a child.

WM. A. MULLOY, (p. 22,) "Mrs. Mallion never told me this was her child. * * Mary Ann Roby called them papa and mama, she was raised by them * * and I do not recollect at that time of hearing much talk about this child as being the daughter of either of the parties, more recently I have heard more talk than formerly. It may have been the cause of my forming the opinion that she was an adopted child, I have no knowledge of the fact either way. Mrs. Mallion raised this child, and certainly treated her as a child. She was a very kind old woman to every body.

X. Mary Ann Roby passed by the name of *Mary Mallion* never heard her called *Mary Ann.*

CHARLES A. VERMILLION, (p. 25,) "I have known Mary Ann Roby about twenty-five years or more * * I suppose she was married when I first got acquainted with her; she sometimes went by the name of Roby, and sometimes by the name of Mallion. * * I have always heard Mrs. Roby call Mrs. Mallion mother, but I never heard Mrs. Mallion call her daughter.

Testimony for defence as to Mary Ann Roby being the daughter of Jane Mallion.

JANE NORMAND. (p. 35,) I knew old Mr. Vandora Mallion and his wife, they lived on Capitol Hill, and I lived in one of their houses, I knew a young girl living in the family named Mary Ann Sallus. I do not know whose child she was. I have heard the old lady Mrs. Vandora Mallion say this girl was an adopted daughter; that she adopted her in the city of Baltimore. This girl, Mary Ann Sallus inter-married with a man named Roby. When Mrs. Mallion was provoked with this girl she would tell people how kind she had been to Mary Ann in raising her to work. * * I never heard Mrs. Mallion say that this was her child; she could not have said so, because she said she had adopted her. Mrs. Mallion told me when she, the girl, was two or three months old she took her and raised her by feeding through the thumb of an old buckskin glove.

X Ex. I was well acquainted with Mr. Mallion and his wife, because I lived a long time on the hill in one of their houses. * * I have heard Mrs. Mallion say more than once, when she was mad with Mary Ann that she had adopted her and how kind she had been in raising her. * * I will tell the truth because I have a greater judge to stand before than I have here, and it cannot be expected to be long before I do. * * As far as I saw, Mrs. Mallion treated this girl very kind, she always called her Mary Ann. I never to my knowledge heard her call this child daughter. My memory is not at fault about this. * * (p. 36,) I never heard Mrs. Mallion call this girl Mary Mallion, I have heard her call her Mary Ann Sallus. That was the girl's mother's name. They all came from Baltimore. I could not swear this was the girl's mother's name, only from what I heard.

JOHN H. WISE. (p. 39.) I have known Mary Ann Roby about twenty years. Mary Ann Roby called Mrs. Mallion AUNT MALLION. Mary Ann Roby came to *see me frequently*, and *said she ought to have this property in question, because Mrs. Mallion was her aunt; after the death of Mrs. Mallion, Mary Ann Roby * * lived about three squares from my house. I never heard of her setting up a claim to this property as the only heir of Mrs. Mallion; she said Mrs. Mallion had raised her and was* HER AUNT.

Mrs. Roby was also examined, (p. 26 & 27,) but she does not throw any additional light on the question of *who was her mother*?

At p. 40, an issue was ordered by the Equity Court to be tried in the Circuit Court, "whether Mary Ann Roby, the original complainant in this suit, was born of the body of Jane Mallion?" And the jury found in the affirmative which was duly certified to the Equity Court.

The record does not show that any other evidence was submitted to that jury than "the depositions pertinent and competent to this issue," which had then been taken in this cause, and now form part of the transcript therein.

There are two vital questions in this cause in the decision of which it is respectfully submitted the court below, erred—

First, a question of law;

That is, it will be maintained here that under the lease from William Prout to Jonathan Porter, a chattel interest only was created, and inured to Vandora Mallion by his marital right; or,

Second, Vandora Mallion, surviving his wife, took a vested interest in the lease; and under either one or the

other of these two rights had power to bequeath that chattel interest.

Third, that by the will of Vandora Mallion, all the interest in said lease with the covenant of purchase, passed to Edward Knight, and they, the complainants, have no standing in court.

The third a question of law as to the jurisdiction of the Court. The other a question of FACT.

That the preponderence of the evidence in the cause is against the verdict of the jury and the finding of the court; and there is no sufficient proof that Mary Ann Robey was the legitimate daughter of Jane Mallion.

As to the first point, the lease, Exhibit A, p. 32, is to "Jonathan Porter, trustee of Jane Mallion." * * p. 33. To have and to hold the said piece of ground * * to him the said Jonathan Porter, in trust, for the use and benefit of the said Jane Mallion, *her heirs and assigns*," for ninety-nine years, to be renewed and renewable from ninety-nine years to ninety-nine years forever to the said Jonathan Porter, trustee as aforesaid, *his heirs and assigns* yeilding and paying, &c.

1. This is clearly a lease for years, the freehold remaining in Prout, and the chattel interest alone being vested in the lessee. Black. Comm., Book II, ch. 9; ch. 20, part III, § 4.

2. By the death of the lessee, that interest became assetts of the estate of deceased lessee, and passed to the executor or administrator—Kelty's Mary'd Laws, 1798, chap. 101, sub. chap. 7.

3. If this chattel interest passed to the executor or administrator of Jonathan Porter, the complainant could not maintain this bill in its present form.

4. If it was in Jane Mallion in her life time, it passed to her husband *jure mariti*, for by the law of Maryland, and of this district, in force at the date of this lease, and

until and after the death of Jane Mallion, all the personal property of the wife passed to and vested in the husband.

5. By the act of Maryland already quoted, sub. chap. 5, sec. 8, no administration was necessary on the personal estate of Jane Mallion. Her husband took it by survivorship.

6. The leasehold in this case, by the terms of the lease, passed to Jane Mallion; that is, the use was executed in her. Black. Comm. Book II, chap. 20 § *use;* p. 333, Stat. Uses, 27 Hen. 8, "when any person shall be seized of lands &c., to the use, confidence, or *trust* of any other person or body politic, the person or corporation entitled to the use in fee simple, fee tail, for life, *or years*, or otherwise, shall from thenceforth stand and be seized or possessed of the land &c., of and in like estates as they have in the use, *trust*, or confidence" &c. "The statute thus executes the use; that is, it conveys the possession to the use, and transfers the use to the possession; thereby making *cestui que use* complete owner of the lands and tenements, as well at law as in equity."

7. There are no words in this lease making this a separate or sole estate in this married woman, nor is the husband made a party to it, or even named in it; and without these it passed to her husband at law and in equity.

a. The intervention of a trustee does not make it separate property; Brown v. Clark, 3 Ves., 166; Lumb v. Milnes, 5 Ves., 517: "To and for her use;" Jacobs and Wife v. Amyatt, 1 Mad., 376, note; "For her use and benefit;" Kirk v. Paulin, 7 Vin., 195; do not create a separate estate.

b. There must be words indicating clearly the intention of the grantor that the estate or interest was for "*the sole and separate use*" of the wife, or the husband will take.

See Clancey on Married Women, Book III, chap. 1 and 11.

As to the second point.

Vandora Mallion's will is duly proved, and not contested. It is executed and admitted to probate according to law. Relating to personal property, this probate is conclusive evidence of the bequest to Edward Knight, its effect is to vest this chattel interest in Edward Knight who went into possession under it. It is immaterial whether Edward Knight did or did not surrender the property to appellant; the complainant has no interest which would give him a standing in court.

If the property vested in Jane Mallion in her life time, and did not pass to her husband, there is no sufficient proof, that the complainant is a descendant of Jane Mallion.

The finding of the jury is but an aid to the finding of fact by the chancellor; persuasive but not conclusive.— The evidence is too contradictory, and the facts so easily susceptible of full proof if Mary Ann Roby was the daughter of Jane Mallion, that the court below ought not, on the evidence in this record, to have found she was. Baltimore, the alleged place of her birth, is close by, and easily accessible. There was, in all reasonable probhusband's family still living when the proofs were taken ability, some member of Jane Mallion's, or her alleged first in this cause, and it is scarcely credible that Mary Ann should not have heard from Jane Mallion, or some one else, something about her parentage and family connection, if she were really the daughter of Jane. The absence of any such proof is a strong circumstance to show that she was, as the witnesses for the defence state the *adopted daughter* of Jane Mallion.

In matters of pedigree, involving essentially the inquiry into the *lawful* birth of offspring, the chastity of the putative mother, and her associations for years, are clearly evidence of much weight.

Even where the fact of marriage is established, the modern doctrine is settled that although the child be born in wedlock the presumption of legitimacy may be rebutted not only by direct, but also by presumptive evidence. To determine the question, we must consider not only physical impossibility, but it may also be decided by attending to the relative situation of the parties, their habits of life, evidence of conduct, and to every induction which reason suggests for determining upon the probabilities of the case. The finding should rest in the exercise of sound judgment, according to the preponderance of the presumptions.

3 Phil Ev. 601, and the cases in note 2.

Gardner's Peerage case, Pendrel vs. Pendrel, 2 Str. 924.

Banbury Peerage case. By Eldon, Redesdale and Ellensborough.

R. vs. Luffe, 8 East. 206.

Harg. Co. Lit. 123, b.

Goodright vs. Saul, 4 Term R, 356.

There is no evidence whatsoever of a marriage in *facie ecclesiae*, nor any pretence thereof.

Mary Ann Mallion states in her direct examination that the date of Jane Mallion's death is "set down in the Bible." If a family record was kept, it should have been produced, or accounted for, and proof given of

entries of other family records, as for instance, Mary Ann's marriage, if such had ever been solemnized.

Testimony of reputed marriage in this case is given; but it is entitled to little weight, because it was not of an ancient date, and several of the witnesses knew her familiarly before that date.

As to the legitimacy of her offspring: Mary Ann states she continued at house-keeping and boarded young men, down to the death of her mother.

On a careful review of the evidence, it must be admitted the presumptions are all against the marriage relied upon, and the plaintiff's legitimacy.

Second Point, as to pedigree. Was Mary Ann Roby the child of Jane Mallion?

Her parentage was the issue submitted to the jury, and they found she was the daughter of Jane Mallion. That verdict does not conclude the chancellor.

The court may put the parties on terms to abide the result. That was not done in this case.

In point of practice, and in point of law, the verdict is not conclsive.

2 Story Eq. Jurisp. sect. 1479, a.

In Ansdell vs. Ansdell, 4 Mylne et Craig, 449, 454, Lord Cottenham recognized emphatically the above rule.

The Plaintiff must make out a *good prima facie* claim to legitimacy at least. The force of his proof is for the sound judgment of the chancellor.

The illegitimacy of any one in the line of ancestors will defeat the plaintiff.

3 Phil. Ev. 598, title Ejectment.

See also authorities in note (6,) the same page.

He may *purchase* to him and his heirs after he obtains a reputed name.

Co. Litt. 3. b.

Her principal incapacity is this, she cannot be *heir* to any one.

What evidence has the plaintiff furnished of Mary Ann being the child of Jane Mallion? And if her child, what proof is there that she is legitimate?

The two questions may be considered together.

The only witnesses produced by the plaintiff are James Lynch, Henrietta Waters, Charles A. Vermillion, William A. Mulloy, Mary Ann Roby, and the present plaintiff, Thomas Roby.

Henrietta Waters, herself a lewd woman, became acquainted with Jane Mallion after she came to Washington.

It is conceded by the plaintiff, that Jane Mallion came to Washington and married Vandora Mallion; that Mary Ann was with her, and was quite a young child, and continued to live with her until she approached womanhood.

Not a witness knew by what name Jane Mallion went before she acquired that of Mallion. As far back as 1820 that was her name. None knew from whence she came, whether she had ever married before, or, if married, who was her husband.

The pedigree of Mary Ann rests by her own witnesses upon declarations of Jane Mallion, and the social relations between them.

The declarations of Jane Mallion are not sufficient to raise a presumption that she was lawfully married to any one before she became Mallion.

Even general reputation is not sufficient to raise a *prima facie* proof of marriage sufficient to justify a verdict.

It must be supported by some original proofs of the parties demeaning themselves as husband and wife in various relations.

1 Gr. Ev. § 107. 1 Phil. Ev. 234, 5. Cases cited by Gr. in note (3.)

No other person than Jane Mallion ever stated she had been married to a man named Rogers. Mary Ann says "the date of her *mother's death* is put down in the *Bible*." If there is such a family entry, it must have been within her reach, and the presumption is against the entry of her mother's marriage if the record is not produced.

But the declarations of persons in matters of pedigree are confined to relations and marriage connections.

1 Gr. Ev. sect. 103, and notes (1, 2.)

In this case they all rest on Jane Mallion, who, in two instances only, asserted she had had a former husband named Rogers.

Henrietta Waters says she told her (witness,) (f. 15,) her first husband's name was Rogers; (f. 14,) but the witness admits she never heard what her maiden name was. Neither did she ever see him or hear of him from any body else.

Jane Mallion lived until Mary Ann was *about fifty years* old, and it is incredible that Mary Ann never had from Jane Mallion, if her mother, especially if her lawful mother, information of who her father was, and facts to enable her to establish her legitimate birth.

Wm. A. Mulloy says: (f. 24.) I think she (Mary Ann) is a woman of a fair degree of intelligence.

Lynch and the other plaintiff's witness on these subjects affirm that she treated her as if she were her child; all of which is consistent with adoption.

The reason of the rule for resorting to hearsay evidence in cases of pedigree is settled.

It is upon the ground of the interest of the declarants in the person from whom the descent is made out, and their consequent interest in knowing the connections of the family, and none can testify save those related by blood or marriage.

Apply this reasoning to the present case, and we find that to make the declarations of Jane Mallion evidence we must *assume* her to be related by blood or marriage to Mary Ann, which is the very fact denied, and sought to be proved, and the same difficulty exists in reference to the declarations of Mary Ann and Thomas Roby.

The case is very remarkable in this. Jane Mallion gives no information of the time and place of her alleged marriage, nor the given name of Rodgers, to her alleged daughter, Mary Ann, for fifty years. Mary Ann never seems to have inquired on that subject, nor asked when or where he died, although ten years old when her alleged mother united with Mallion. Thomas Roby, alias Mallion, never knew his putative mother's (Mary Ann) maiden name. So he testifies.

If competent witnesses to establish the pedigree, which we deny, of what value would their testimony be?

But this subject is not left without light. If declarations are relied upon, see what Mrs. Jane Normand says: (p. 35.)

The testimony of this witness is full and highly commendable for its temper, moderation, and gravity; given in the spirit of a reply she made on her cross-examination, when inquired of by Mr. Totton concerning her

memory, (f. 35.) "I cannot remember, of course, like I use to; I will tell the truth, because I have a greater judge to stand before than I have here, and it cannot be expected to be long before I do." See also J. H. Wise, (p. 39.)

It will be seen this testimony is consistent with the testimony of the other witnesses, and the relation which Mary Ann seemed to hold to Jane Mallion's household.

But it is destructive of *her case*, and consequently of Thomas Roby's the plaintiff.

4th Point; As to his remedy.

Admitting the pretensions of the plaintiff, he cannot maintain this suit because he has an *adequate remedy at law.*

The plaintiff claims the possession of the property in dispute by descent cast from Jane Mallion to Mary Ann Roby, and from Mary Ann Roby, to him, the plaintiff.

It is clear the defendant has no legal title whatsoever to the possession, (assuming the plaintiff's allegations to be true,) for his ancestor, William Prout, in 1820, forty-nine years since, parted with it; and also the defendant has recognized that transfer of title.

If the plaintiff has established by proof himself to be the lineal, legal, sole descendant of Jane Mallion, then the right of possession is in him as much as it could be in her, if living. This gives him his action to recover that possession.

It is enough for the plaintiff in ejectment to show a right of possession.

Hylton vs. Brown, 1 Wash. C. C. 204.

It is said by the plaintiff that the rights of Jane Mal-

lion are vested in the plaintiff; and that the defendant has fraudulently and in an unlawful manner, re-entered the premises and is an intruder thereon.

Admit this to be true for argument sake. If there is a fraudulent re-entry, the defendant has acquired no rights by his fraud.

If the re-entry was not (as the plaintiff claims,) made in conformity with the law, it will avail him, the defendant, nothing.

Bradley vs. Connor, 17 Peters, 263.

Undoubtedly Jane Mallion, if living, could maintain ejectment for these premises, for she had prior peaceable possession of the premises under a deed duly executed, and the plaintiff says, the defendant is an intruder without legal title. Nor can the defendant set up the outstanding title in the trustee's heirs.

Christy vs. Scott, 14 How. 282,

Same vs. Findley, same 296,

Same vs. Young, same 296,

Same vs. Hendley, same 297,

If, as the plaintiff avers, the defendant unlawfully, but peaceably entered, and unlawfully detains the possession; or if he entered by force, and unlawfully detains the possession, and the plaintiff is vested with the rights of Jane Mallion, then the plaintiff has another remedy under the act of Congress of July 4, 1864, section 2, 13 Stat. 383, 384, commonly called the Landlord and Tenant Act.

Upon the recovery of the possession by either of the processes at law adverted to, the plaintiff would have full compensation for the rental value of the premises by his action for mesne profits.

And upon tender of the sum of $430 stipulated in the lease, he might demand his deed in fee simple.

JOS. H. BRADLEY,
JOS. H. BRADLEY, Jr.,
Sols. for Appellant.

IN THE

Supreme Court of the United States.

DECEMBER TERM, 1871.

ROBERT PROUT, APPELLANT,
vs.
JOHN T. ROBY, APPELLEE. } No. 192.

Brief for Appellee.

The original bill in this cause was filed in November, 1865, by Mary Ann Roby, the mother of the appellee, and prayed for a specific performance of a covenant in a lease, to convey real estate, an account of rents and profits, and for the correction of a clerical error in the description of the property.

In 1820 William Prout, the father of the appellant, executed and delivered to Jonathan Porter, trustee of Jane Mallion, a lease under seal, by which he conveyed to said Porter the lot of ground now known as lot four, in square seven hundred and eighty-seven, in the city of Washington, in trust for the use and benefit of the said Jane Mallion, her heirs and assigns, for the term of ninety-nine years, renewable for ninety-nine years and forever, reserving an annual rent of $25.80.

The lease contains a clause providing that if such yearly rent shall remain unpaid at the expiration of sixty

days after the same shall have become due, and there being not sufficient effects upon the premises whereon to levy and make the said rent, then the lessor may re-enter said premises and eject the said trustee, his heirs, executors, administrators, or assigns, and the same again enjoy as if the lease had never been executed.

There is also contained in the lease a covenant that if the said trustee, or the said Jane Mallion, her heirs or assigns, shall at any time hereafter pay to the lessor, his heirs or assigns, the sum of $430.00, over and above all rents for said piece of ground that may then be in arrear, then and in that case the lessor, his heirs or assigns, shall make and execute a good and sufficient release in fee simple of the said property to the said Jane Mallion, her heirs or assigns.

The said lease contains an additional covenant in the following words: "And it is further covenanted and agreed that the said Jane Mallion shall be, and she is hereby, authorized to dispose of her interest in the hereinbefore described lot or portion of ground by will and testament, and such bequest shall be deemed and taken to vest fully such title as this instrument conveys, subject to all its provisions for payment of rent, of taxes, *et cetera*."

Mrs. Mallion at the time of the execution of this lease was the wife of one Vandora Mallion. Soon after the execution of the lease the lot was improved by the erection of three brick dwelling-houses, and Mrs. Mallion and her husband occupied the premises together until about 1852, when Mrs. Mallion died intestate, leaving her husband in possession of the property, and leaving Mary Ann Roby, the original complainant, her widowed daughter, her sole heir-at-law.

In 1853 Vandora Mallion executed a paper, puporting to be his last will and testament, whereby he attempted to give and bequeath all his property, real, personal, and mixed, to the "Rev. Edward Knight," who was a Catho-

lic priest. In 1856 he turned over the property in controversy, together with much other valuable property, to the said Knight, for the benefit of the Catholic church, and then entered an infirmary, where he soon afterwards died. The church continued to hold the property until some time in 1861, when, the corporate authorities of the city of Washington having made a special assessment on the lot for the construction of a pavement, the property was abandoned by the church.

During the occupation of the premises by Vandora Mallion and the priest the lessor received his rents.

Jonathan Porter, the trustee, died many years ago, and no one can be found who knew him. William Prout, the lessor, also died a long time ago, and, on a division of his property amongst his heirs, the premises in question were assigned to the appellant, subject to this lease.

During the interval between the time when the priest abandoned the premises, and the 1st of January, 1865, the houses were occupied by the sub-tenants left in possession by the church, without paying any rents, and without any demands having been made upon them for rents. In the latter part of December, 1864, the tenants were induced to move from the premises by threats of a distraint for rent, made by an agent of the appellant and for the purpose of having them return and re-occupy the premises as his tenants. The appellant has ever since been in possession.

The original complainant, Mary Ann Roby, died since the commencement of this action, and the present appellee, her son and sole heir-at-law, has been duly substituted.

The answer of the appellant denies that the complainant was the daughter of Jane Mallion, and insists that she was only an "adopted" child. When the cause had been first heard in the court below the court directed an issue to be framed, submitting to a jury the question whether said complainant was "born of the body of Jane

Mallion," and the jury returned their verdict in favor of the complainant, and it is submitted that, upon the pleadings, the question of the legitimacy of Mary Ann Roby cannot arise.

But the evidence fully establishes the legitimacy of both Mary Ann Roby and her son, the appellee.

The testimony shows family declarations of marriage, cohabitation, general reputation, and acknowledgment, and these are sufficient.—(1 Greenleaf's Ev., §§ 28–103; *Fenton vs. Reed*, 4 John., 52; *In re Taylor*, 9 Paige, 611; *Rose vs. Clark*, 8 Paige, 574; *Sellman vs. Bowen*, 8 Gill & J., 50; *Morres vs. Miller*, 1 W. Black., 632.)

The point most strenuously insisted upon in the court below on the part of the defence, although not raised by the pleadings, was that the language of this lease did not create a *separate estate* for the benefit of the wife, and that, therefore, the husband's marital rights attached. That the estate was a chattel interest, and the husband having reduced it to possession, and having disposed of it by his last will and testament, that the property is now in the Catholic church, and not in either the appellant or appellee.

The language of the lease created a *separate estate* for the use and benefit of Mrs. Mallion. The tenor of the instrument leaves it clear and certain that it was the intention to create an estate for the use and benefit of the woman exclusive of the marital rights of the husband. It was for the benefit of her and her heirs and assigns. It contains a covenant for a conveyance in fee to her, her heirs or assigns, on payment by any of them of the sum of $430, which is inconsistent with any other intention than that of a separate estate in the wife. It places the estate at her disposal by last will and testament.

The authorities on this question are very numerous and very conflicting, and are collected and commented upon in Perry on Trusts, §§ 647–653, and in Schouler's Domestic Relations, chap. X, page 187. But I think the following

cases will be considered conclusive in establishing that there was a separate estate created by this instrument.—(*Tyrrell vs. Hope*, 2 Atkyns, 561; *Darley vs. Darley*, 3 Atkyns, 399; *Atcherly vs. Vernon*, 3 Brown's Ch., 381; *Hartley vs. Hurley*, 5 Vesey, 539; *Adamson vs. Armitage*, 19 Vesey, 415; *Margetts vs. Barringer*, 7 Simon, 482; *Hamilton vs. Bishop*, 8 Yerger, 33; *Fears vs. Brooks*, 12 Geo., 195; *Heck vs. Clippinger*, 5 Barr, 385; Tyson's Appeal, 10 Barr, 220; *Bridges vs. Wood*, 4 Dana, 610; *Strong vs. Gregory*, 19 Alabama, 146.)

Even admitting that this instrument did not create a separate estate for the wife, it cannot affect the question here. This bill was filed by the heir to compel a specific performance of the covenant to convey to the wife or to "her heirs." The marital rights of the husband could not extend beyond the fruits of the estate, and absorb the principal. The legal estate was in a trustee and the equitable estate created by the covenant to convey was not a chattel interest, and descended to the heir. If an action had been begun by the husband or his creditors, during the life-time of the wife, to recover the rents and profits of the leasehold property, the question whether there was a separate estate or not would have arisen as in *Lumb vs. Milnes*, 5 Vesey, 516. But here is a plain agreement to convey real estate upon the payment by the trustee, the *cestui qui trust*, or her heirs or assigns, of the sum of $430. Suppose that after the death of Mrs. Mallion, her surviving husband had filed a bill for a specific performance of this covenant to convey,—he could not have maintained his action.

The will to the Rev. Edward Knight is void under the Maryland Declaration of Rights, which declares that every devise of lands or chattels, to any minister or preacher of the gospel, shall be void.—(*Newton vs. Carbery*, 5 Cranch, C. C., 635.)

The lease is still subsisting. It is not void on a breach of the covenant to pay rent.—(*Doe vs. Wandlass*, 7 Term

R., 116; Taylor on Landlord and Tenant, §§ 492 and 714.)

The lessor was bound by the terms of the lease to make his rent by distress, if sufficient effects could be found on the premises. If sufficient property could not be found to satisfy the rent after thorough search, then the lease could have been determined by the landlord, either by the technical common law demand, or under the act of 4 Geo. II., Ch. 28. No such demand was made nor were any proceedings instituted under the act, consequently the lease has not been forfeited.—(*Bowman vs. Foot*, 1 Am. Law Register, 316, note 3; Taylor on L. & T., §§ 493–287–288; *Connor vs. Bradley*, 1 How., 217; *Doe vs. Wandlass*, 7 Term R., 116; *Van Renselaer vs. Jewett*, 2 Coms., 148.)

And if there had been a forfeiture of the lease, it was for a breach of the covenant to pay rent, and courts of equity will always relieve against such forfeiture, because the damages are susceptible of exact computation.—(*Bowman vs. Foot*, before cited; *Skinner vs. White*, 17 John., 357; Taylor on L. & T., § 495; 2 Story's Equity Juris., § 1314–18.)

ENOCH TOTTEN,
Counsel for Appellee.

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aff'd

Judge Davy

Judge Clifford Dissents

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~451~~ ~~238~~ 146

CHARLES G. MILLER, W. T. MILLER, ISAAC HILLS, LEVI A. WARD, VINCENT M. SMITH, ASAHEL O. COMSTOCK, DAVID R. MORSE, HENRY C. FISK, AND GILBERT CAMERON, PLAINTIFFS IN ERROR.

vs.

THE PEOPLE OF THE STATE OF NEW YORK.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

FILED DECEMBER 30, 1870.

Dec 31, 1872